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A  
TREATISE  
ON THE  
GAME LAWS,  
AND ON  
FISHERIES;

WITH AN  
APPENDIX,  
CONTAINING  
ALL THE STATUTES AND CASES ON THE SUBJECT.

—◆—  
IN TWO VOLUMES.  
—◆—

VOL. I.

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By J. CHITTY, Esq.

OF THE MIDDLE TEMPLE.

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1812.



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# DEDICATION.

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TO  
THE RIGHT HONOURABLE  
THOMAS, LORD ERSKINE,  
&c. &c. &c.

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My Lord,

THE very kind and flattering marks of confidence which I have had the gratification to experience from you, induce me to hope that your Lordship will allow me the honour of dedicating this work [to you. Much of my professional success is attributable to your Lordship's kind support, and I have ventured to presume that the same benevolence will induce you not to deny me the sanction of your name on the present occasion. I beg to subscribe myself with the greatest gratitude and respect,

My Lord,

Your Lordship's  
most obliged and  
faithful servant,

JOSEPH CHITTY.

Temple, 28th November,  
A. D. 1811.





## PREFACE.

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IT is remarkable that there is no work of any magnitude on the law relating to *Game* and to *Fisheries*. It is a subject interesting to the Profession, and peculiarly so to Gentlemen of landed property. Numerous, indeed, and much to be regretted are the disputes and actions which arise from the real or supposed infractions of this law. It appears to me, that animosities of this nature are generally the effect of ignorance, on the part of the injured, or of the offender, of their respective rights and liabilities, and that therefore nothing would so effectually tend to prevent such disputes, as to shew to those who are possessed of exclusive and peculiar privileges how far such privileges extend, and to explain to others the wrongs which they commit, and the penalties to which they subject themselves, by their encroachments on the rights of their neighbours, or their violation of the law; and thus, by defining to all the limits which they are forbidden to exceed, to hinder, on the one hand, authority from swelling into oppression, and on

the other, to prevent ignorance from leading men into litigation. The subject is partially collected in Burn's Justice, and in some other publications, but these afford imperfect, and frequently erroneous information ; and the great number of ancient as well as modern enactments and decisions, unnoticed in those works, sufficiently evince the necessity for a more enlarged treatise. I am induced, by these considerations, to offer the following pages to the public.

In preparing this work, more labour has been undergone than is usually employed ; for every page of the Statute Books and Reports has been examined, in order to prevent information from escaping notice. Hence it will be found that all the principles, statutes, and decisions upon the subject are collected and digested, and a great number of valuable decisions in the Year Books, and other ancient reporters, which, from their mode of printing, have hitherto been inaccessible in practice, have been translated and incorporated ; and, in order to render the work more complete and useful in itself, as well to those whose libraries may not contain all the Statutes and Law Reports, as to Professional Gentlemen, who may wish to save trouble in referring to other books, the statutes and cases are printed in the Appendix, and the whole work is rendered accessible by a very full Index.

To enable the reader to judge how far the subject proposed to be considered may be worthy of

his attention, it may not be improper here to give a concise prospectus or analytical view of the contents.

The Treatise, or Digest, is divided into two parts, the first relating to **GAME**, the second to public and private **FISHERIES**.

The first part contains ten chapters. In the first chapter, the legal *definition* of Game is considered, as well as the *property* in it in general, and the restraints on taking it at common law and by statute, and the *policy* of those regulations.

The second chapter relates more particularly to the *places privileged* as to game, such as the franchises of forests, chases, parks, and free warrens, and the protection of game in other places not particularly privileged, as manors, hare and rabbit warrens, private grounds and decoys.

In the third chapter are considered those important legislative enactments and decisions which confine the liberty of sporting to *qualified persons*; the ancient and modern statutes are here fully examined, and the *qualifications* to kill game are stated, as they relate to the owners of forests, parks, chases, and free warrens, lords of manors, and their gamekeepers, (with all the points relating to the appointment of a *gamekeeper* and his authority)—the qualification of the eldest son of an esquire, or of a person of higher degree, and the qualification in respect of estate, whether it be an estate of inhe-



ritance or only for life, or for a term of years ; and this chapter concludes with observations relative to unqualified persons sporting with those who are qualified.

The fourth chapter contains a practical view of the *penalties* and *punishments* to which *unqualified persons* are subject for sporting ; and of the penalties on officers and soldiers for killing game, and on inferior tradesmen, apprentices, and others, for sporting without leave of the owner or occupier of the land.

The fifth chapter relates to the *time* when game may be taken, and the *mode* of taking it, the offence of *buying and selling* it, or of an unqualified person *having it in possession*, and the regulations which tend to preserve it, by prohibiting the *taking of eggs and burning of heath*.

In the sixth chapter is considered in particular the law relating to *Deer, Rabbits, and Pigeons*.

The seventh chapter relates to the *summary proceedings* against offenders, and the searching for and seizing their dogs, guns, nets, and game, either by foresters, park-keepers, justices of the peace, and others acting under their warrant, lords of manors and their gamekeepers, and by others.

In the eighth chapter are considered very fully all the different *offences* relating to game, and when they are punishable *criminally*, or by *pecuniary penalties*. When an *indictment* is sus-

tainable at common law or by statute for such offences. When a *quo warranto* is sustainable. And the proceedings for the recovery of pecuniary penalties, either by action or by information in the Crown Office, or by information before a justice of the peace.

In considering the mode of proceeding by *action*, are stated the court in which it must be brought, the time within which it must be commenced, by and against whom, the declaration and pleadings, the evidence, trial, verdict, new trial, and costs.

In considering the mode of proceeding by *information in the Crown Office*, are stated the affidavit on which to found the information, the information itself, the process and arrest upon it, and the appearance and subsequent proceedings.

In considering the course of proceeding by *information before a magistrate*, are fully stated all the statutes and decisions relating to, 1st, the time within which the information is to be exhibited; 2ndly, who may be the informer; 3dly, who may be prosecuted; 4thly, the information; 5thly, the summons of the offender; 6thly, his appearance or default, and the hearing of the complaint; 7thly, the witnesses and evidence; 8thly, the conviction, and all its requisites; 9thly, the execution and levying the penalty; 10thly, the appeal when given, and the recognizance thereon; 11thly, the certiorari and bond to prosecute it; and 12thly, the execution upon the appearance, and costs.

The ninth chapter relates to the *private remedies* either to prevent or *punish* trespasses in pursuit of game, notices not to trespass, costs, pleadings, &c.

The tenth chapter, which concludes the first part of the work, contains the regulations as to game certificates, and the decisions upon them.

## PART II.

THE second part of the Digest contains the law relative to public and private *Fisheries*.

In the first chapter are considered the nature and different descriptions of *public fisheries* either in distant seas or in the British four seas and navigable rivers. The nature of the public right of fishing and its qualifications are investigated, all the regulations calculated to preserve and encourage fisheries in these waters are here collected, with the decisions upon them, as they relate to—1st, weirs and other obstructions; 2ndly, the taking spawn, fry, and young fish; 3rdly, the time of the year when fish may be taken; 4thly, the mode of taking them, and size of nets; 5thly, the importation, buying and selling of fish; and 6thly, the persons authorized to interfere to prevent the infraction of these provisions. The regulations relating to particular fisheries, as oyster fisheries; the Thames and Medway and Severn, and other rivers are also considered.



The second chapter of this part of the work relates to *private right of fishery*, and to actions for injuries thereto, and the pleadings therein.—*First* is considered the *places* in which a private right of fishery may exist either in the sea and navigable rivers, in rivers not navigable, lakes, ponds, &c. Secondly, are arranged all the statutes and decisions relating to the *interest* or right in the fishery in their places, whether as owner of the soil, of a several fishery, free fishery, or common of fishery.

In the last chapter are fully considered the criminal proceedings and penalties for injuries to private fisheries, and the pleadings and convictions thereon.

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The APPENDIX comprises *all the Statutes* on the subject from Magna Charta and the Charta Forestæ to the present time, and *all the Cases* from the earliest period, and these are noticed and digested in the Treatise, and referred to in Index.

I cannot refrain from availing myself of this opportunity to thank my Pupils for their very kind and useful assistance in the irksome task of collecting the ancient and modern decisions on the subject, and in translating the former; and I am particularly indebted to my friend and pupil, Mr. John Blackburn, as well for the assistance afforded by his clear and discriminating view of

every legal subject, as for his zealous and unre-  
laxed attention to conduce to the improvement  
of the work.

I have prepared a very comprehensive collection  
of the forms of proceedings for offences relating  
to the Game Laws and to Fisheries, to be adopted  
by magistrates, and otherwise connected with  
law proceedings, which might prevent the repe-  
tition of questions on this subject. But I am  
unwilling to encumber the purchasers of the  
work with the expense of a third volume, till I  
know their wishes upon the subject, and there-  
fore for the present I forbear the publication of  
such additional volume.

*Middle Temple, }*  
*28th Nov. 1811. }*

J. CHITTY.

## PART I.

### OF THE LAW RELATING TO GAME.

#### CHAPTER I.

OF THE PROPERTY IN GAME IN GENERAL—  
THE RESTRAINTS, ON TAKING IT, AT COM-  
MON LAW AND BY STATUTE, AND THE POLICY  
OF THOSE REGULATIONS.

**A**LL wild animals which afford sport to their pursuers are, in the most extensive signification of the word, GAME (*a*), a term derived from the Saxon, and signifying any sport or diversion (*b*); but in legal acceptance it is that species of wild animals which the arbitrary constitutions of positive law have distinguished from others (*c*). It would be difficult, if not impossible, to state as a

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(*a*) 7 Coke. 15. b.—Post, Appendix, 840.

(*c*) 2 Bla. Com. 14. 395. 403. 413.—Johnson's Dictio-

(*b*) Johnson's Dictionary, Game.



**Definition.** general rule what animals are game within the legal meaning of that term; for some of the statutes treat even rabbits as game, which are not so considered in others (*d*); and therefore where the term game is mentioned in a statute, it is necessary to attend to the object of the legislature in passing the particular provision, in order to ascertain what animals are included within it.

Of the king's property in game, and power to grant franchises relating to it.

Most of the writers on general law assert that the sovereign has the sole *property* in game, and that he may communicate that right to others exclusively in what degree and under what restraints he pleases. (*e*) In this country there seems to be considerable doubt as to the nature of the sovereign's interest in the game.

(*d*) Thus the Statute 13 R. 2. c. 13, and the 22 and 23 C. 2. c. 25. treat rabbits as game, which could not be so considered within the prohibition of 5 Ann. c. 14. s. 4.; and the 48 Geo. 3. c. 55. mentions woodcocks, snipes, quails, landrails, and rabbits as distinguishable from game. The 13 R. 2. c. 13. post, Appendix, 369. mentions "deer, hares, *conies*, or other gentlemen's game." The Stat. 22 and 23 C. 2. c. 25. enables lords of manors to take and seize dogs and nets for killing conies, hares, pheasants, partridges, or other game; and the 4 and 5 W. & M. c. 23. speaks of hare, partridge, pheasant, pidgeon, fish,

fowl, or other game; and Lord Coke, in his 7 Rep. 15. b. post, Appendix, 840. treats deer and rabbits as game; however, in the case of the King v. Thomson, 2 Term Rep. 18.—post, Appendix, 1225. Mr. Justice Ashurst appears to have considered it as being quite clear that a woodcock or rabbit was not game, and the 48 Geo. 3. c. 55. schedule L. affords the same conclusion; and in Rex v. Yaites, 1 Lord Raymond, 151. post, Appendix, 981. the Court held that rabbits, though in a private warren, were not game.

(*e*) Puffendorf, lib. 4. ch. 6. s. 4, 5, 6.

It is laid down by Sir William Blackstone, in his <sup>Property in</sup> Commentaries (*f*), “ that by the common law <sup>game.</sup> the sole property of all the game in England is vested in the king alone, and that the sole right of taking and destroying it belongs exclusively to him, and that consequently no person, of whatever estate or degree, has at common law a right to kill game, even upon his own land, unless by licence or grant from the king.” This doctrine is in some measure countenanced by the undoubted power of the king to grant a free warren, which is a liberty to take game within a particular district, in exclusion of all others (*g*). But there are such a current of dicta and decisions which shew that the owners of land have uniformly been considered to have a local property in game, and a right to take it whilst upon their own land (*h*), that this unqualified position of the learned commentator must be deemed incorrect. And we find no instance, either criminal or civil, in which a party has been sued or prosecuted on behalf of the king for taking game, unless he took it within some privileged place ; and on the contrary it is laid down that no indictment can be supported

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(*f*) 2 Bla. Com. 14, 15. 835. 839. 844. 863. 903. 905. 391. 394. 413. 419. and in 946. 975. 985. 1002. 1006. 4 Vol. 174. 415. 1063, 4. 1185. 1298.—4 Inst. 303.—See also 2 Bla. Com. 419. n. 10. by Mr. Christian.

Property in  
game.

for stealing animals *feræ naturæ* unless reclaimed, because they are the property of no one (*i*). For some time after the Conquest, the sovereign indeed did assume the power of making for himself, and of granting to his subjects, forests, chases, parks and warrens over the lands of others without their concurrence; but we find, from the authority of Lord Coke (*j*), that this was contrary to the common law, and that the *charta de foresta*, which expressly prohibits the making of fresh forests and disafforests several, is only a declaratory law, securing to the subject his former right, and that the king cannot raise a free chase, park, or warren for himself in any of the grounds of his subjects, because the common law has so admeasured the king's prerogatives that they cannot take away or prejudice the inheritance of any one. And we find that, in the reign of Hen. 8. (a prince who insisted particularly upon his prerogative,) it was admitted that the king could not erect a chase or forest over any man's grounds without his consent (*k*).

The *charta de foresta*, though it precluded the king in future from granting exclusive privileges over other person's lands, without their concurrence, still, however, leaves it open to him to make a forest over the demesnes of the crown, or a chase, park or free warren over the grounds of

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(*i*) Post, 840. 1063. — 2  
Bla. Com. 393.

(*j*) 4 Inst. 300, 301.  
(*k*) 4 Inst. 301.

others with their consent (*l*). And therefore forests and free warrens over other person's lands may at this day exist, because, as observed by Lord Coke (*m*), when the ancient kings had the most part of the lands in their own hands, they might make what forests they pleased therein, in which case, after they granted out parts of those lands, the forest would nevertheless continue, there being a reason and cause of a lawful beginning; and therefore a forest may be by prescription good in law over other men's grounds. So, as a grant of free warren might be made by the king to a person over his own land, who afterwards sold the land, reserving the free warren, or right of killing game to himself, it came to pass that a man and his heirs may have free warren over another's ground (*n*). In these cases there was no infraction of the right of the first owner of the soil, for the king, in the first instance, only made the forest over the demesnes of the crown, and, in the latter, only granted the free warren to him who was owner of the land. This power, however, of the crown, does not prove the existence of any *exclusive* right to the game, but merely shews that it has the privilege of securing to the then owner of the soil a more permanent and certain interest in the game than he could otherwise have acquired (*o*).

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(*l*) 4 Inst. 301.

(*m*) 4 Inst. 301.

(*n*) 2 Bla. Com. 39.

(*o*) See the nature of the



Restraints by the *common law* on taking game, and the property a private individual may have in it in general.

Our game laws are restrictive of the right which, in a mere state of nature, exists in every one to kill animals *feræ naturæ*, wherever he may find them. The *common law* subjects every person, even a lord of the manor (*p*), to an action of trespass for entering the land of another, in order to search for or pursue game, unless he have a free chase or free warren over it, so that no one can sport, except in his own land, without being guilty of an infraction of the law (*q*), though he may in some cases acquire a property in the game which he may thus have illegally taken.

A person may be invested with a *qualified* but *not* an *absolute* property in all creatures *feræ naturæ*, either *per industriam*, *propter impotentiam*, *propter privilegium*, or *ratione soli* (*r*).

A qualified property may subsist in animals *feræ naturæ per industriam hominis*, as by a man's *reclaiming* or making them tame, or by so *confining* them within his own immediate power that they cannot escape and use their natural liberty ; as deer in a park, hares or rabbits in an enclosed warren, pheasants or partridges in a mew, and fish in a private pond, or in trunks.

king's concurrent right with the subject very learnedly discussed in Mr. Schulte's *Aquatic Rights*, p. 18, &c.

(*p*) 11 Mod. 74.—Post, 1006.

(*q*) 2 Bla. Com. 419. — Lord Raym 251.

(*r*) 7 Coke, 15. b. Case of Swans, post, 839. as to the property in game.

These are no longer the property of a man than while they continue in his keeping or actual possession, and if at any time they regain their natural liberty, his property instantly ceases, unless they have *animus revertendi*, which is only to be known by their usual custom of returning. But while they thus continue in the possession of the party reclaiming them, they are as much under the protection of the law as if they were absolutely and indefeasably his property, and an action will lie against any man who detains them from him, or unlawfully destroys them, and it is as much felony by the common law to steal such of them as are fit for food as it is to steal tame animals (*s*).

Restraints on  
sporting by  
the common  
law, &c.

A qualified property in animals *feræ naturæ* may also subsist, *ratione impotentie*, or on account of their own *inability*. As when birds build in the trees upon a person's land, or rabbits or other creatures make their burrows or nests and have young ones there, in which case he has a qualified property in the young ones till they can fly or run away, when the property expires. Till which time it is in some cases trespass, and in others felony to take them away (*t*).

A qualified property in animals *feræ naturæ* may also exist *propter privilegium*, that is, by

(*s*) 1 H. H. P. C. 512.— 1063.

2 East. Pl. Cr. 607.—Post, (t) 2 Bla. Com. 394.—2 Appendix, 772. 812. 840. East Pl. C. 607.

Restraints on  
sporting by  
the common  
law, &c.

having the privilege of hunting, taking or killing them in exclusion of other persons, by virtue of a grant of a forest, chase, free warren or park, or of a several or free fishery (*u*). Here the party has a transient property in these animals usually called game, as long as they continue within his liberty, and may restrain any stranger from taking them therein, but the instant they depart into another liberty this qualified property ceases (*v*).

Lastly, every person has a *qualified property* in game whilst upon his own private ground, *ratione soli*; and if a man start any game upon his own ground, and follow it upon another's, and kills it there, the property remains in himself, for the property consists in the possession, which possession commences by the finding of it on his own land, and is continued by the immediate pursuit (*x*). So if a stranger starts game in one man's chase or free warren, and hunts it into another liberty, the property continues in the owner of the chase or warren, this property arising from privilege, and not being changed by the wrongful act of a mere stranger (*r*). Or if a man starts game on another's private grounds, and kills it there, the property belongs to him in

(*u*) 2 Bla. Com. 38. 394. dorf. B. 4. ch. 6.—Gedge and  
and 416. Minne, 2 Bulstr. 60.—Post,

(*v*) 2 Cro. Car. 554. — Appendix, 873.  
March 48.—5 Mod. 376. (c) Ld. Raym. 251.—Post,

(*x*) 11 Mod. 75.—Puffen. Appendix, 984. 1002.

whose ground it was killed, because it was also Restraints on sporting by the common law, &c. started there, the property arising *ratione soli* (y). Whereas, if after being started there, it is killed in the grounds of a third person, the property belongs not to the owner of the first ground, because the property is local, nor yet to the owner of the second, because it was not started in his soil, but it vests in the person who started and killed it, though guilty of a trespass against both the owners (z).

Our *legislative* provisions (a) are in restraint Restraints on sporting by statute law, and policy of the regulations. of the common law right of every owner of land, however small the value, to kill game even on his own estate. They require that he shall have an estate of a certain annual value; and prohibit every one from killing game at particular seasons of the year, and by particular modes; and persons not having real estate to the prescribed amount are subjected to penalties for sporting. These various provisions, which will hereafter be considered in detail, have not unfrequently been treated, even by authors of authority, as tyrannical, and as an unnecessary and arbitrary restraint upon the liberty of the subject (b). But it will

(y) *Sutton v. Moody*, *Ld. Raymond*, 250. — 3 *Salk.* 290. — 11 *Mod.* 74. — *Post*, *Appendix*, 984. 1002. 1006.  
(z) *Lord Raym.* 251. — 2 *Bla. Com.* 419. n. 11. — *Post*, *Appendix*, 806. per *Brook, J.*

(a) 2 *Bla. Com.* 419. — *Ld. Raym.* 251.

(b) 2 *Bla. Com.* 412, 13. — 4 *Bla. Com.* 174, 5. 415, 16. — 1 *Term Rep.* 44. Per *Willes, J.* *post*, *Appendix*, 1209.



Restraints on  
sporting by  
statute, &c.

on consideration be found that the weight of objection is rather to the inartificial language of the statutes upon this subject than to their intended operation, and that there is no injustice or impolicy in this system of law. There is no *injustice* in excluding a person who has no property in land from pursuing the sports of the field on the land of others. In a civilized state of society all property is appropriated, and no one can acquire any interest in it but by purchase, or by descent from a preceding occupier; and even the air itself, though considered common to all, cannot be enjoyed upon the land of another, without subjecting the party to an action for the unlawful entry; and if a person enter the waste of a manor, or a common highway, for any other purpose than the exercise of his right of common or way, he is subject to an action of trespass (c); and by giving a man an exclusive dominion over his own soil, the improvement of land and of agriculture are greatly encouraged (d). And though wild animals may frequently change their situation from one estate to another, yet as they reciprocally feed upon the corn and other produce of the respective owners, there appears sufficient reason for vesting the right of taking game in such owners, in exclusion of those who have no land, and who consequently do not contribute to the sustenance of these ani-

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(c) 2 Str. 1004.—*Dovaston v. Payne*, 2 Hen. Bla. 527.

(d) 2 Bla. Com. 411, 412.

mals ; and though it has been objected that there is no reason for excluding persons, who have a less interest in land than 100*l.* per ann. from killing game, and that it is unreasonable to require so large a property as a qualification to sport, when a freehold of 40*s.* a year is sufficient to enable a person to vote for a knight of the shire (*d*) ; it is obvious that the qualification for the former proceeds quite on a different principle from the latter ; the liberty to kill game is confined to persons whose fortune and rank may justify the application of their time to the sports of the field ; but this is no reason why a party having a less interest in land, should not have a voice in the election of a representative, who is to protect in parliament his liberty and property. And with respect to the precise amount of the required qualification, the law must, as observed by Sir Wm. Scott, proceed upon some settled rule, and cannot fluctuate according to the change in the value of property or the circumstances of a particular case (*e*). If any alteration in the law were to be made, it should be in favour of the tenants of large farms, who, by being allowed a qualified power of killing game, would be induced to adopt measures for the preservation of it, when their interest at present is directly the reverse ; and no inconvenience could result

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(*d*) 4 Bla. Com. 175.

curius, 5 Rob. Rep. 127, 8.

(*e*) In the case of the Mer.

Restraints on  
 sporting by  
 statute, &c.

Restraints on to the landlord, because, if he thought fit, he  
sporting by might restrain his tenant from sporting y ex-  
statute, &c. press covenant.

On principles of *policy* also the restrictive regulations appear to be justifiable and prudent. The avowed policy of the legislature has sometimes been the prevention of idleness and dissipation in husbandmen, artificers, and others of low degree, which would be the unavoidable consequence of universal licence (*f*); and at other times the preservation of the game, which would soon be extirpated by general liberty of sporting, and which the modern statutes without reserve state to be the object of the enactment. And though no legislative interference can, perhaps, be available totally to prevent idleness or to encourage industry, yet any provision which excludes inferior persons from pursuing game is at all events advantageous, if it tends to prevent an indulgence of idle habits in that pursuit; for habitual poachers are generally obnoxious members of society in other respects (*g*). The husbandman, the artificer, or mechanic, who frequently indulges in the sports of the field, rarely becomes an industrious member of society, and any law which

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(*f*) 2 Bla. Com. 412.

of Beaufort, 2 Atk. 190.—  
post, Appendix, 1082, 3.

(*g*) See observation of Ld.  
Hardwicke in *Roy v. Duke*

deters a person from such pursuits must be beneficial to the community.

Restraints on  
sporting by  
statute, &c.

The existing regulations as to game principally relate to the preservation of them in particular *places*—to the *persons* who are qualified, or prohibited from killing them—to the *time*, and to the *mode* of killing them—to the *disposal* of them when taken—to the *persons authorized to interfere* in the preservation of game, and the *modes* of their interference—to the *criminal punishments* and the *penalties* for the infraction of the law, and the mode of enforcing them—to the *civil remedies* for injuries to the exclusive right to game, independently of penalties—and, lastly, those regulations which were introduced for the purposes of the revenue, and which relate to *game certificates*. We will, in the following chapters, consider these subjects in the order as they arise.

Enumeration  
of the object  
of the principal  
regulations.



## CHAPTER II.

OF THE PLACES PRIVILEGED AS TO GAME, AS  
FORESTS, CHASES, PARKS, FREE WARRENS,  
MANORS, HARE AND RABBIT WARRENS, PRI-  
VATE GROUNDS, AND DECOYS.

**T**HERE are certain districts and places which by grants from the crown, and by different legislative provisions, are peculiarly privileged for the preservation of game. There are also regulations for the preservation of game in other places, though not particularly privileged. Those of the first description are franchises, such as forests, chases, parks, and free warrens; and those of the latter are manors, hare and rabbit warrens, private grounds and decoys.

Franchise  
defined.

A *franchise* is defined to be a royal privilege, or branch of the royal prerogative subsisting in the hands of a subject by grant from the king (a). A forest is the highest franchise relating to game, a free chase is the next in degree, a park the next, and the last a free warren.

Forests.

A *forest* comprehends in it a chase, a park, and a free warren, for which reason the beasts of chase and the beasts and fowls of warren are

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(a) 3 Cruise, 278.

privileged within a forest, as well as the beasts of Forests, the forest (*b*).

Forests (of which it is said there are 69) (*c*) are defined to be waste grounds belonging to the king, replenished with all manner of beasts of chase or venery, which are under the king's protection, for the sake of his royal recreation and delight; and to that end, and for preservation of the king's game, there are particular laws, privileges, courts, and officers belonging to such forests (*d*). Before the passing of the *charta de foresta* the king assumed the power of making and granting forests over the lands of his subjects without their concurrence; but this statute, which Lord Coke (*e*) insists was only declaratory of the common law, put a stop to the exercise of such pretended privilege. But a power of making a forest over his own land, though not exercised, still exists in the king (*f*). And though Sir William Blackstone states that a forest in the hands of a subject is properly the same thing as a chase, being subject to the common law, and not to the forest laws (*g*), yet it appears that a forest, when granted by letters patent to a subject, is not necessarily a chase, and that when it is granted by the name of a forest, *habendum cum omnibus incidentibus et pertinen-*

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(*b*) *Manwood. tit. Chase.* — *Com. Dig. tit. Chase, A.*  
 50. *tit. Forests, 147, 148.* (*e*) 4 *Inst. 300.*  
 (*c*) 4 *Inst. 319.* (*f*) 4 *Inst. 300.*  
 (*d*) 1 *Bla. Com. 289.* — (*g*) 2 *Bla. Com. 38, cites 4*  
*Manwood. tit. Forests, 143.* *Inst. 314.*

**Forests.**      this, the grantee takes it as a forest, with all courts and officers except the justice in eyre, and this too may be granted to a subject by express words (*h*). But if the jurisdiction be not added in the grant, it then becomes a chase, and trespasses in it are punishable only by the common law (*i*). Beasts of forest are stated by Lord Coke (*j*) to be hart, hind, buck, hare, boar, and wolf, but legally all wild beasts of venery are such. It has recently been decided (*k*) that there may be a valid custom in a manor within the limits of an ancient forest belonging to the crown, for the lord, with the assent of the homage, to grant parcels of the waste, to be held in severalty by copy of court roll, and enclosed, in exclusion of persons having rights of common; for the crown may still exercise the same rights of forest over it as before; and whether the deer be excluded must depend upon the nature of the enclosures; and if the fences are erected higher than are permitted by the laws of the forest, the forest officers may still interfere and break them down.

**Purlicus.**      A *purlicu*, which is derived by Lord Coke (*l*) from *pur*, clear, entire, and exempt, and *lieu*, a place, is land adjoining to a forest, known by

(*h*) Com. Dig. tit. Chase, A. 2.—Post, Appendix, 875, 6, 7. 879, 880.

(*i*) Manwood. tit. Forest, 153.—4 Inst. 314.—Co. Lit. 233. a.—3 Cruise. 292.

(*j*) Co. Litt. 233. a.

(*k*) Boulcott v. Winmill, 2 Camp. 261.—Post, Appendix, 1357.

(*l*) 4 Inst. 303.

meers immoveable upon record, and which was Purlieus. formerly within the forest, but was disafforested by charta de foresta (*m*). The purlieu, however, notwithstanding this statute for many purposes relating to game, still continues a forest (*n*), and is privileged in the protection of deer by various modern statutes (*o*). The land is disafforested as to the particular owners of it and for their benefit, and not generally so as to give liberty to every one to hunt; and if animals escape out of the forest into the purlieu, the king has a property in them against every one but the owner of the woods and lands in which they are, and such owners have a special property in them *ratione loci* (*p*). But Lord Coke (*q*) says, that in any purlieu a man may as lawfully hunt, to all intents and purposes, within the purlieu in his own grounds as any other owner may do in his grounds that never were afforested.

A *chase*, or *free chase*, (of which there are said to be 13,) (*r*) is a place or district privileged by royal grant or immemorial usage, which supposes such grant, for receipt of beasts of chase or royal game therein, protected even from the owner of the land, with a power of hunting them

Chase, or free chase.

(*m*) Manwood, tit. Pur- 1119. — Post, Appendix, lieu, 242. — Com. Dig. tit. 1078. and see post, 360. Chase, I. 1.

(*n*) 4 Inst. 303. — Man- 1119. — Post, Appendix, lieu, 242. — Com. Dig. tit. 1078. and see post, 360. Chase, I. 1.

(*o*) 3 W. and M. c. 10. 16 Geo. 3. c. 30.—2 Str. 129.

(*p*) Manwood, tit. Pur- 1119. — Post, Appendix, lieu, 242. — Com. Dig. tit. 1078. and see post, 360. Chase, I. 1.

(*q*) 4 Inst. 303.

(*r*) 1 Woddes. Vin. Lec.



Chase, or free chase. thereon (*s*). Lord Coke (*t*) says, that beasts of chase are properly buck, doe, hart, lind, roe, fox, martin, hare, boar, and wolf, but legally all beasts of venery. Since the passing of *charta de foresta* Lord Coke (*u*) says, that the king has no power to grant a free chase over the lands of a subject without his concurrence, and it is probable that a chase was never granted over any grounds but those of which the grantee was himself seised, and most of the ancient grants of free chase are confined to the demesne lands of the grantee. Where the king granted a forest, or any part of one, to a subject by the name of a forest, but without the words enabling him to hold courts, the grantee held it only as a chase (*v*). The difference therefore between a chase and a forest is, that a chase has no laws peculiar to it, and therefore all offenders therein are punishable by the common law, and not by the laws of the forest (*w*).

Parks.

A *park* (of which it is said there are 781) (*x*) is an enclosed chase, extending only over a man's own grounds. The word park, indeed, properly signifies an enclosure, yet, as observed by Sir Wm. Blackstone, it is not every enclosed place stocked with a herd of deer that is thereby constituted a legal park: for the king's grant, or at

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(*s*) 2 Bla. Com. 38. — (*v*) 4 Inst. 314. — Man.  
Manwood, tit. Chase. — wood, Tit. Forest. — Post,  
Com. Dig. tit. Chase, B. Appendix, 879.

(*t*) Co. Litt. 233. a.

(*u*) 4 Inst. 301.

(*w*) Manwood, tit. Chase.

(*x*) 1 Wooddes. 129.

least immemorial prescription, is necessary to <sup>Parks.</sup> make it so (*y*). There are three things necessary to constitute a park, soil, enclosure, and game; and if there be a grant of a park, excepting the deer, the exception is void. (*z*). If any one should erect a park without the king's licence, a quo warranto may be issued, and the park may be destroyed (*a*). But it seems that the king still has the power of giving licence to make a park on a subject's own ground (*b*). Parks as well as chases are subject to the common law, and are not under the jurisdiction of the forest laws (*c*). The owner or keeper of a lawful park may shoot any dog running after deer in it (*d*). A legal park, by grant or prescription, which has laid open for 40 years or more, may be again enclosed, for nonuser of a park or warren is no ground of loss or forfeiture (*e*).

A *free warren* is a privilege to have beasts <sup>Free warrens.</sup> and fowl of warren (*f*) on certain lands, ita

(*y*) Co. Litt. 233.—2 Inst. 199.—11 Rep. 86.—Man. wood. tit. Park.—2 Bla. Com. 38. See the observations of Willes, Ch. J. in *Davies v. Powell*, Willes's Rep. 46.—Post, Appendix, 1064. 6.

(*z*) *Zouch v. Moore*, 2 Roll. Rep. 276.—Post, Appendix, 919.

(*a*) Post, Appendix, 704. and Index, title Quo Warranto. A park may be within a forest, Appendix, 898. and it may by prescription be appendant to a manor, Appendix, 704, 804.

(*b*) 5 Eliz. c. 21. s. 4. post, Appendix, 411.

(*c*) 4 Inst 314.

(*d*) 1 Saund. 84. n. 3.

(*e*) *Leicester Forest Case*, Cro. Jac. 755. post, Appendix, 851. 854.

(*f*) These are described in Co. Litt. 233. a. Com. Dig. Chase, F. The beasts are hares, conies, and roes; the fowls are either campestris, as partridges, rails, and quails; or sylvestres, as woodcocks and pheasants; or aquatiles, as mallards and herons.

Free warrens, quod nullus intret ad fugandum vel capiendum quod ad warrennam pertinet (*e*). It can only be claimed by grant from the king or by prescription, which supposes such grant (*h*); and if a party make a free warren, even in his own lands, without the king's licence, a quo warranto may be issued (*i*). It may by prescription be claimed as annexed to a manor (*h*). Bracton (*l*) mentions a case in which it appears that the king might grant a free warren to a person over another's land without his consent; but Lord Coke (*m*) insists that the king had no such power, and the existence at this time of a warren over another's land is accounted for by Sir Wm. Blackstone (*n*), who observes, that the keen sportsmen of ancient times, sold their estates, and reserved their free warren, or right of killing game, to themselves. Any one, however, may lease or convey his land, reserving to himself the right of entering to kill game without being subject to be sued as a trespasser; but this reservation gives him no exclusive right to the game as to third persons, nor

(*g*) 2 Roll. 812. l. 5 to 20.  
—Com. Dig. tit. Chase, D.  
—2 Bla. Com. 38, 39.—3  
Cruise. 295.

(*h*) Year Book, 5 Edw. 4.  
p. 121. — Post, Appendix,  
769.

(*i*) Com. Dig. Chase, D.  
—Manwood. tit. Forest.

(*k*) Post, Appendix, 926.

(*l*) 56. b. 3 Cruise, 295.

(*m*) 4 Inst. 301. et vid. Grice

v. Lec, Winch. 16. cites 44  
Edw. 3. 12.—Post, Appen-  
dix, 912.—King v. Birt,  
2 Keble, 530.—Post, Appen-  
dix, 946.

(*n*) 2 Bla. Com. 39.—Bro.  
Ab. tit. Warren, 3.—and see  
Sutton v. Moody, 1 Ld. Ray.  
250.—Post, Appendix, 985.  
See also Appendix, 927. and  
the King v. Birt, 2 Keb. 530.  
—Post, Appendix, 946.

is it like free warren, which is alienable or trans-<sup>Free warrens.</sup>missible from ancestor to heir (*o*). The owner of a free warren may lawfully kill any dog which is used to haunt the warren (*p*). And in an action of trespass for entering a free warren, and which is sustainable even against the owner of the soil (*q*), though damages are under 40s. the plaintiff is entitled to full costs; for, as observed by Blackstone, J. "In actions instituted merely for breaking free warren, it is impossible the title to the soil can ever come in question; for though both may concur in one person, yet the title to the free warren is always collateral to that of the land; for a man may have free warren in alieno solo. Besides, in that case, the hare which was hunted was the personal property of the owner of the free warren; and if any injury be done to personal property, that will take it out of the statute and entitle the plaintiff to full costs." If a stranger starts game in a chase or free warren, and hunts it into another liberty, the property continues in the owner of the chase or warren; this property arising from privilege, and not being changed by the illegal act of a mere stranger (*r*). So an

(*o*) 7 Co. 17.—Bac. Ab. Prerogative, B. 4. — Year Book, 5 Hen. 7. p. 10.—Post, Appendix, 779.

(*p*) Wadhurst v. Damme, Cro. Jac. 45.—Post, Appendix, 850.—Wright v. Ramscot.—1 Saund. 84. n. 3.—Post, Appendix.—Vere v. Lord Cawdor, 11 East. 568.

(*q*) Lord Dacre v. Tebb, 2 Bla. Rep. 1151.—Post, Appendix, 1166.

(*r*) Sutton v. Moody, 1 Ld. Raym. 251.—Post, Appendix, 984. 1002. Formerly where a fine was paid to the king for trespass, it was said in Year Book, 15 Hen. 7. p. 16. post, Appen-



Free warrens. action lies for hunting in a free warren, though no game be taken (*s*).

Franchises in general.

All these franchises **must** have originated in the crown, and are therefore sometimes termed royalties (*t*). They may be claimed by grant or prescription, and twenty years undisturbed exercise of a claim of free warren or park, will afford presumptive evidence of right in the party so enjoying it (*u*). The interest in them is therefore affected by rules, differing from those which regulate other real property. Thus we find it observed by Lord Coke (*v*), that a man may have a free chase, as belonging to his manor, in his own woods, as well as a warren or park in his own grounds; for the chase, warren and park, are collateral inheritances, and not issuing out of the soil as the common does, and therefore if a man hath a chase in other men's grounds, and afterwards purchase the grounds, the chase remaineth. These franchises may, in some cases, be destroyed by a re-union with the crown, from which they issued, or by the surrender of the person entitled to them, or by his forfeiture, in consequence of a breach of the trust upon which

dix, 803. that if one be convicted of hunting on a warren he shall pay a greater fine than for a mere trespass, quod nota.

(*s*) Lord Dacre v. Jebb, 2 Bla. Rep. 1151.—Post, Appendix, 1166.—Patrick v. Greenway, 1 Saund. 346. b. —Post, Appendix, 945.

(*t*) Post, Appendix, 445. 845. 1006.—3 Cruise. 278.

(*u*) Bealey v. Shaw, 6 East. 215.—Weld v. Homby, 7 East. 199.—Goodtitle v. Baldwin, 11 East. 488.—Yard v. Ford, 2 Saund. 175. n. 2. —Post, Appendix, 879. 769.

(*v*) 4 Inst. 318.

they were granted (*w*). A free warren may also be forfeited by misuser, though it seems it can- not by the non-appointment of a warrener, or by non-user (*x*).

Franchises in general.

Besides these franchises there are other places which entitle their owner to some local privileges with respect to game. Such are manors, hare and rabbit warrens, private grounds, and decoys.

Places not being franchises.

At common law, it does not appear that there is any particular privilege with respect to game annexed to a *manor* (*y*). Over those parts of the manor which were reserved by the lord in his own hands, either as private enclosures or as waste, he had at common law the same and no greater interest in game than any private person has over his own estate. And with respect to the land in the tenure of the freehold and copyhold tenants within his manor, he had no power, during the existence of their estates, to enter on it, either to hunt for, or to preserve game. And Sir W. Blackstone (*z*) observes, that even the lord of a manor cannot sport on another's soil, though within his manor, without being subject to an action of trespass. And there are decisions to the same effect (*a*); and though a warren may,

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(*w*) 3 Cruise. 301. See free warren, post, Appendix, 704. 706. 753. 822. 846.  
the various instances indexed under the heads Appurtenant, Extinguishment, Forfeiture, &c.  
(*y*) 2 Bla. Com. 90. for the definition of a manor.  
(*z*) 2 Bla. Com. 39. 419. and see conclusion of note 10.—4 Bla. Com. 416.  
(*a*) 11 Mod. 74. post,

(*x*) Post, Appendix, 710. In general, re-union in the crown does not extinguish a

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by prescription, appertain to a manor, yet it is not parcel of it (*b*). It was for some time doubted (*c*) whether a lord of a manor, unless he was qualified by estate, and was an esquire, was authorized to kill game himself, or to appoint a game-keeper, though, as we shall hereafter see, it is now established that a person, *as* lord of a manor, is authorized to kill game within it (*d*). But this is merely an exemption from penalties, and does not authorize the lord, or his game-keeper, to enter the land of the copy hold or freehold tenants.

The first regulation relating to game which creates a distinction in favour of manors, is 22 and 23 C. 2. c. 25. (*e*) by which lords of manors, or other *royalties*, are authorized to appoint game-keepers, within their respective manors or royalties, who may take and seize the guns and dogs of unqualified persons, kept or used for the purpose of destroying game, for the use of the lord of the manor, or royalty (*f*). It has been observed (*g*) that the common, but erroneous opinion, that the lord of a manor has a peculiar right to the game within his manor, probably owes its rise to the power which this statute gives the lord of appointing a game-keeper.

Appendix, 1006.—Vin. Abr. tit. Manor, X.—See also Bourne v. Taylor, 10 East. 189.

(*b*) Cro. Eliz. 547. Vin. Ab. tit. Manor, B.

(*c*) Post, Appendix, 1098, 9. 1210.

(*d*) Post, Appendix, 1102. 1 Watkins, 45.

(*e*) Appendix, 1172. post, Game-keepers.

(*f*) See the Stat. post, Appendix, 445.

(*g*) 2 Bla. Com. 418. n. 9.

But it gave no power to a game-keeper to *kill* Manors. game; nor did it extend the common law right of the lord of the manor, so as to enable him to commit trespasses on the lands of others. And the statutes, 5 Ann. c. 14. s. 4. and 9 Ann. c. 25. which enable lords of manors to appoint one game-keeper to *kill* game within each manor, do not enable him to sport over the lands of others. These statutes give a power to game-keepers, duly appointed, to prevent unqualified persons from destroying the game, even by the permission of the possessor of the land. But as there is no *express* authority given to enter the lands of others, and as it is a maxim of law that no person can be disseised of his freehold without *express* words, it follows that neither the lord of the manor, or his game-keeper, have, by these statutes, any right to enter the lands of others without their consent. And though the annual mutiny acts vest in the lord of a manor the power of giving permission, under his hand and seal, to officers, or soldiers, to kill hares, rabbits, pheasants, and partridges, within the manor (*h*), this cannot authorize them to trespass over the lands of others, but merely exempts them from the penalties of those acts.

It should seem that a manor by reputation; but which has ceased to be a legal manor by defect of suitors to the court, may yet retain its privilege as a preserve for game, and might authorize

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(*h*) 47 Geo. 3. 32. post, Appendix, 675.



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the lord to appoint a game-keeper (*i*). It has recently been determined, that a lord of a manor has no power as such, or as the owner of private lands within it, to kill a dog of a qualified person running after game (*k*).

Hare and rabbit warrens.

Hare and rabbit warrens, and grounds not enclosed, used for breeding and keeping rabbits, have also some peculiar privileges (*l*). A warren of this nature is very different from the free warren which we have already considered, and which we have seen cannot be made without a licence from the crown; whereas any person may make a rabbit warren on his own land, without being liable to a quo warranto, or any criminal proceeding (*m*). This, in *Carril v. Pack* (*n*), Doderidge, J. said, there is a material distinction between this description of warren, as it is called, and a warren by prescription, or grant; for if one who hath no warren, do put rabbits into an enclosed ground, he cannot have, as in the case of a legal warren, an action of trespass quære warrennam fregit, but merely a common action of trespass, in which he will not be entitled to full costs, as in an action for entering a free warren. No action can be supported against a person for keeping so many rabbits

(*i*) *Soane v. Ireland*, 10 East. 259. *sed quære*. Strange, 637. post, Appendix, 1047. 957.—per *Ld.*

(*k*) *Vere v. Ld. Cawdor*, 11 East. 568. post, Appendix, 1363. Holt, in *Sutton v. Moody*, 1 *Ld. Raym.* 250. post, Appendix, 985.

(*l*) See Stat. 22 & 23 C. 2. c. 25. s. 4. (*n*) Per Doderidge, J. in *Carril v. Pack*, 2 *Bulst.*

(*m*) *Rex v. Lowther*, 1 115. post, Appendix, 867.

on his own land as to become injurious to his neighbour, for being animals *feræ naturæ*, the latter may kill them when upon his own land (*o*). And the lord of a waste, over which there is right of common, may lawfully make rabbit burrows, and in this case a commoner cannot kill the rabbits, though they become so numerous as to prejudice his right of common, but he is driven to bring an action against the lord for surcharging (*p*). The renting of one of these warrens for 10*l.* a year, will gain a settlement (*q*); and if A. has a warren in his lands, and lets the lands to B. rendering rent, and B. kills the rabbits, A. may bring trespass against him (*r*).

Hare and rabbit warrens.

But these enclosed grounds, which are not free warrens, do not appear to have any particular privilege by the *common law*; and though the owner of a *free warren* may, we have seen, kill a dog hunting game, it does not appear that a person who has made a rabbit warren without a licence from the crown, has any such authority (*s*). There are, however, some privileges given to these places by particular *legislative provisions*.

By the black act, 9 Geo. 1. c. 22. (*t*) it is enacted, that if any person, *armed and disguised*,

(*o*) Post, Appendix, 844. 92*s.* 988.

(*p*) See post; and post, Appendix, 1122 to 1125. and 867. 855, 6. 909. 831.

(*q*) The parishes of Kinver and Stone, 2 Strange, 678. post, Appendix, 1050.

(*r*) Dyer's Rep. p. 30. Case 200. post, Appendix, 814.

(*s*) See the observation of Le Blanc, J. in Vere v. Ld Cawdor, 11 East. 568. and post, Appendix, 1364.

(*t*) Post, Appendix, 514.

Hare and rabbit warrens.

shall appear in any *warren* or *place* where *hares* or *conies* are usually kept, or unlawfully rob any such warren, or (whether armed and disguised or not) shall rescue any person in custody for either of the said offences, or procure any to join with him in any such unlawful act, he shall be guilty of felony without benefit of clergy. And by the 22 and 23 C. 2. c. 25. s. 4. (u) it is enacted, "That if any person shall at *any time* enter wrongfully into any warren or ground lawfully used or kept for the breeding or keeping of *conies*, although it be not enclosed, and there shall take, chase, or kill any conies, against the will of the owner or occupiers thereof, not having lawful title or authority so to do, and shall be thereof lawfully convicted, he shall pay treble damages, and be imprisoned three months, and until he shall find sureties for his good behaviour." And by the 5th section it is enacted, "That no person or persons shall take or kill any conies upon the border of any warrens or other grounds lawfully used for the breeding or keeping of conies, except the owner or occupier of the soil, or his servant, upon pain of paying damages to the party grieved, in the discretion of the justice before whom the conviction shall take place, and also paying a sum not exceeding 10s. to the overseer, for the use of the poor of the parish, or he

With reference to the decisions on the acts against deer-stealing, see *Rex v. Davies*, Leach Cr. L. C. 306. post, Appendix, 1200. This

statute may probably be considered as virtually repealed by the 5 Geo. 3. c. 14. *sed quære*.

(u) Post, Appendix, 447.



shall be committed to the House of Correction for a period not exceeding one month." And the killing them in the *night* is made felony, and subjects the offender to seven years transportation, by the statute 5 Geo. 3. c.14. (x). The provisions for the preservation of hares and rabbits will hereafter be more fully considered.

Hare and rabbit warrens.

With respect to *private grounds*, it appears that there is no distinction between preserves and any other enclosures, and therefore no action will lie for frightening game from a preserve, against a person who shoots near it, but upon his own land (y). But we have seen that the occupier may prohibit every one, except the owner of a chase, or free warren, from sporting over his grounds, and if he be himself qualified, he has the exclusive privilege of killing game thereon (z). If a person attempt to enter by force, he may oppose him with force (a), and he may support an action of trespass against any intruder (b), and an indictment, and sometimes an information in case of a battery (c). He has a property in the game *ratione soli* whilst upon it, and if started and killed there by a third person, this property is not divested (d). In some cases, a court of equity will interfere to prevent a repe-

Private grounds and preserves.

(x) Post, Appendix, 610.

(y) Carrington v. Taylor, as reported in 2 Camp. 258. post, Appendix, 1305.

(z) Ante, 8, 9.

(a) 8 Term Rep.

(b) Post, Appendix, 873.

per Dodderidge, J.

(c) Jennings v. Mott, Barnardiston. Rep. 16. post, Appendix, 1051.

(d) Ante, 8, 9.



Private  
grounds and  
preserves.

tition of trespasses (*e*), and he may take a bond to prevent the commission of them (*f*); and though, unless game be excepted in a demise of the land, the possessory interest will vest in the lessee (*g*), yet the tenant may be restrained by bond or covenant from sporting, and the landlord may reserve that right to himself, and make his tenant stipulate to bring actions against trespassers (*h*), though a court of equity will restrain an improper use of such a covenant.

There are also various legislative provisions relating to game in favour of the occupier of private grounds. Thus, by the statute 11 Hen. 7. c. 17. s. 17. (*i*) it is enacted, "That it shall not be lawful to any person of what condition he be, to take or cause to be taken any pheasants or partridges by nets, snares, or other engines, out of his own warren, upon the freehold of any other person, without the assent, agreement, and special licence of the owner or possessionner of the same, upon pain of forfeiture of 10*l.* half to the party who will sue for the same by action of debt, or by bill, or otherwise, and the other half to the owner or possessionner of the said ground upon which the said pheasants and partridges be so taken." And the 8 & 9 Wm. 3. c. 11. s. 4. provides, that if, in an action of trespass for entering land, the judge certify that it appeared on the trial that the trespass was wilful and malicious,

(*e*) Post, App. 1092, 3.

(*f*) Post, App. 1079.  
1082.

(*g*) Post, App. 811, 812.

(*h*) *Id. ibid.* & *Id.* 1082, 3.

(*i*) Post, Appendix, 379.

the plaintiff will be entitled to full costs, though the damages found by the jury be under 40s. Private grounds and preserves. And though this statute is not compulsory on the judge to certify, yet it is usual to do so where the trespass has been committed in pursuit of game after notice (*k*). The stat. 4 & 5 W. & M. c. 23. s. 10. (*l*) also enacts, "That if inferior tradesmen, apprentices, or other dissolute persons, shall presume to hunt, hawk, fish, or fowl, they may be sued, not only for the penalties on sporting as an unqualified persons, but also for their wilful trespass on any person's land, and if found guilty, the plaintiff shall not only recover his damages but full costs." And by the 23 Eliz. c. 10. s. 4. it is enacted, "That no person shall hawk, or with his spaniels hunt, in any ground where corn or other grain shall then grow, (unless in his own ground,) at such time when any eared corn shall be standing, nor before such corn shall be shocked or heaped, on pain of forfeiting 40s. to the owner (*m*)."

These and various other regulations (which will be hereafter noticed) protect the occupier of land against the trespasses of those who are merely in pursuit of their own pleasure. But it appears to have been considered that the common law allowed persons to enter the land of others in pursuit of a fox or badger, or other beast of

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(*k*) 6 Term Rep. 11.—7 Term Rep. 449.—3 East. 495. See the constructions on this stat. post.

(*m*) Post, Appendix, 419.

(*l*) Post, Appendix, 464. and 431, 2.

Private  
grounds and  
preserves.

prey, the destruction of which was considered a public benefit (*n*). But it was always held to be unlawful to enter the land of another, without his consent, to beat for or find these animals, or to dig or break the ground to unearth them, and the party was subject to an action of trespass for so doing (*o*). And though this right of hunting appears not to have been denied in a modern case (*p*), yet Mr. Justice Buller said, that a person cannot unnecessarily trample down another man's hedges, or maliciously ride over his ground, and if he do more than is absolutely necessary, for the purpose of killing the fox, he cannot justify it. And by some recent decisions, the legality of hunting foxes over the land of another, without his concurrence, is rendered very questionable (*q*).

Decoy.

The last of these privileged places is a decoy, or decoy pond. A decoy is not a franchise, but being a place set apart for the taking of wild fowl, and maintained at considerable expense and trouble, is so far privileged, that a party is not only liable for entering it and killing the fowl, but may be sued if he fire a gun so near to it as to frighten away the fowl (*r*). And in the late case of *Carrington v. Taylor* (*s*), it was held

(*n*) *Gundry v. Feltham*, 1 Term Rep. 334. and see post, Appendix, 806.

(*o*) *Gueste v. Myuns*, Cro. Jac. 321.—2 Bulstr. 60.—Post, Appendix, 870. 875.

(*p*) *Gundry v. Feltham*, 1 Term Rep. 334.

(*q*) See Post, App. 1381.

(*r*) *Keble v. Hickringill*, 11 Mod. 74. 130. post, Appendix, 1005 to 1009. and 1369.

(*s*) 2 Camp. 258.—11 East. 571.—Post, Appendix, 1365, 6.

that firing at wild fowl to kill and make profit of Decoy. them, by one who was at the time in a boat on a public river, or open creek, where the tide ebbs and flows, so near to an ancient decoy on the shore (about 200 yards) as to make the birds there take flight, the defendant having before fired at a greater distance from the decoy, which brought out some of the birds from thence, though he did not fire into the decoy pond, is evidence of wilful disturbance of and damage to the decoy, for which an action on the case is maintainable by the owner.



## CHAPTER III.

OF THE PERSONS WHO ARE QUALIFIED TO  
KILL GAME AND KEEP DOGS AND ENGINES  
FOR THAT PURPOSE, AND OF UNQUALIFIED  
PERSONS SPORTING WITH THOSE WHO ARE  
QUALIFIED.

Qualifica-  
tions.

HAVING, in the preceding chapter, considered the regulations relating to game, as far as respects *privileged franchises and other places*, we will now consider those legislative enactments and the decisions on them, which tend to protect game by confining the liberty of killing it to *particular persons (a)*.

At common law we have seen that all persons in possession of land might kill game upon it, unless it were within the limits of a forest, chase, or free warren. But in process of time it was found that this unlimited permission to kill game tended to produce the total destruction of it; and therefore the legislature, at a very early period, restrained this common law right, and required some certain freehold interest in real property to enable a party to kill game. Afterwards, according to the fluctuating policy of the times,

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(a) See the account of these legislative enactments, and the policy of the legislature stated in arguments, post, Appendix, 1096.

(and probably in favour of those persons who, being <sup>Qualifica-</sup> in trade, and possessed of considerable personal <sup>tions.</sup> property, had influence with the legislature) (*b*), *personal* property to a certain amount was made a qualification. But as commerce increased this again was found to extend the privilege to too many, and the qualification was once more restored, as it now continues, to an interest in *real* property. It will also be found that the amount of the qualifications has from time to time increased, according to the decrease in the value of money; the first qualification by estate for killing game in the reign of *Richard the Second*, was 40*s.* a year, in the reign of *James the First* it was advanced to 10*l.* a year, and after that, in some instances, to 40*l.* a year; and at last, in the reign of *Charles the Second*, it was raised to 100*l.* a year. Not, as it has been observed (*c*) that the laws have become gradually more severe, but as the value of money decreased, the qualification was raised in proportion, the estate continuing nearly the same, and the penalty for destroying the game was even more severe formerly than at present. For by the first statute on this subject the punishment was a year's imprisonment, by a subsequent one 10*l.*; whereas under the modern statutes the penalty is only 5*l.* The principal act relating to qualification is the 22 and 23 C. 2. c. 25.; but as there are some preceding acts un-

(*b*) See observation of (*c*) Burn's Justice. tit. Bathurst, J. post, Appen. Game. dix, 1129.

Qualifica-  
tions.

repealed, and which the Statutes of 4 and 5 W. & M. c. 23. s. 2. and 5 Ann. c. 14. s. 1. declare shall be still in force, and which it may be advisable to proceed upon in some cases, we will consider the subject of qualifications with reference to,

1st. *The Statutes before 22 and 23 C. 2. c. 25.*

2nd. *That Statute and the subsequent regulations.*

1st. By the Statute 13 R. 2. c. 13 (*d*), it was enacted, "That no layman who hath not lands or tenements to the value of 40s. a year, nor any priest or other clerk who is not beneficed to 10*l.* per ann. shall keep any dog to hunt, or shall use ferrets or any engine to take or destroy deer, hares, rabbits, or other gentleman's game, upon pain of one year's imprisonment."

The Statute 22 Edw. 4. c. 6 (*e*) enacts, "That no person other than the son of the king shall have a mark or game of swans, unless he have freehold lands and tenements of the yearly value of five marks above all yearly charges;" and it authorizes any of the king's subjects, who have an estate of that value, to seize the swans as forfeit, half for himself, and half for the king.

By the 25 Hen. 8. c. 11. (*f*) all persons who were not gentlemen who could dispend 40s. a year

(*d*) Post, Appendix, 369. it.  
The statute only relates to hunting for pleasure, and does not affect a person hunting a fox or badger to destroy

(*e*) Post, Appendix, 374. see decisions on this act, post, Appendix, 838.

(*f*) Post, Appendix, 383.

freehold, were prohibited from hunting or <sup>Qualifica-</sup>taking wild fowl, and they only with their spaniels or with a long bow. But this clause was repealed by Stat. 3 & 4 Edw. 6. c. 7 (g).

The 33 Hen. 8. c. 6. s. 1. (h) enacts, "That no person, unless he have in his own right, or in right of his wife to his own use, or another has to his use, *lands, tenements, fees, annuities, or offices* of the yearly value of 100*l.* shall shoot, or use to keep any gun otherwise than in this act is directed, on pain of forfeiting 10*l.* half to the king and half to the informer."

The Stat. 2 (commonly called 1) Jac. 1. c. 27. s. 3. (i) requires a qualification of 10*l.* a year estate of inheritance, or 30*l.* a year of a life estate, above all charges and reprises, or that the party should be worth in goods or chattels 200*l.* or be the son of a knight, or baron of parliament, or of some person of higher degree, or the son and heir apparent of any esquire, and subjects persons, not having such qualification, to a penalty of 40*s.* And though the 6th sec. authorizes owners of free warrens, lords of manors, and persons having such estates of 10*l.* or 30*l.* per ann. or being worth 200*l.* to take pheasants and partridges in the day-time only, with nets, in and upon his free warren, manor, or freehold, between

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(g) Post, Appendix, 401, 977.

402.

(i) Post, Appendix, 420.

(h) Post, Appendix, 390, this is in force, except as to 1. See the decisions on shooting hares, 48 Geo. 3. this statute, post, Appendix, c. 93.



Qualifica-  
tions.

Michaelmas-day and Lady-day, the Statute 7 J. 1. c. 11. s. 6. (*j*) repeals this latter clause, and a different provision is introduced, which will be presently noticed.

The next qualification relates to *deer and rabbits* only. By the 3 J. 1. c. 13. s. 5. (*h*) it is enacted, "That any person not having manors, lands, tenements, or hereditaments of the clear yearly value of 40*l.* or not worth in goods or chattels 200*l.* shall use any gun to kill deer or conies, or shall keep any buckstalls, engines, lays, gate nets, purse nets, or coney dogs, unless he be the owner of enclosed grounds, or keeper or warrener in his park or warren, or grounds belonging to their charge, then any person having lands in fee simple, fee tail, or for life, in his own right or in right of his wife, of the clear yearly value of 100*l.* may take the same from such person." But the 8th sec. provides that this statute shall only apply to offences committed in the night-time.

The next qualification relates only to pheasants and partridges. It is enacted by 7 J. 1. c. 11. s. 7. (*l*) (and which we have seen repeals the 6th section of the 2 J. 1. c. 27.) "That every free warrener and lord of manor seised in his own right, or in the right of his wife, of 40*l.* a year of inheritance, or of a life estate of 80*l.* a year, or worth in goods 400*l.* may take pheasants and partridges in the day-time only, by himself or his

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(*j*) Post, Appendix. 431.

(*l*) Post, Appendix, 434.

(*k*) Post, Appendix, 430.

menial and household servants, upon his own or <sup>Qualifications.</sup> his master's free warren, manor and freehold, between Michaelmas-day and Christmas-day without being liable to the penalties of the Stat. 1 J. 1. c. 27."

2dly. *We will consider the Statute 22 and 23 C. 2. c. 25 (m) and the subsequent regulations.* By the Statute 22 and 23 C. 2. c. 25. s. 3. it is enacted, "That all and every person and persons, not having lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly value of 100*l.* per ann. or for term of life, or having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150*l.* other than the son and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens, being stocked with deer or conies for their necessary use, in respect of the said forests, parks, chases, or warrens, are hereby declared to be persons by the laws of this realm not allowed to have, or keep for themselves, or any other person or persons, any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, hare pipes, gins, snares, or other engines aforesaid, but shall be and are hereby prohibited to have, keep, or use the same." It is observable that this statute is merely prohibitory, and does not subject the party to any pecuniary penal-

Qualifica-  
tions.

ty, but merely authorizes the seizure of their dogs and engines in the manner there stated, and as will be hereafter considered. The subsequent statutes which subject unqualified persons to penalties are numerous, those more immediately relating to sporting or killing of game are the Statutes 4 and 5 W. and M. c. 23. and 5 Ann. c. 14.

By the Statute 4 and 5 W. and M. c. 23. s. 3. (n) any person thus unqualified shall keep or use any bows, greyhounds, setting dogs, ferrets, coney dogs, hays, lurchers, nets, tunnels, lowbels, hare pipes, snares, or any other instrument for destruction of fish, fowl, or other game, or have in his possession any hare, partridge, pheasants, pidgeon, fish, fowl, or other game, without giving a good account of how he came by it, shall forfeit not less than 5*s.* and not exceeding 20*s.* one moiety to the informer, and the other to the poor of the parish.

But this penalty being found insufficient, it was enacted by the 5 Ann. c. 14. (o) (made perpetual by the 9 Ann. c. 25.) "That if any person or persons not qualified by the laws of this realm so to do, shall keep or use any greyhounds, setting dogs, hays, lurchers, tunnels, or any other engines to kill and destroy the game he shall forfeit 5*l.*" distributable and recoverable as therein mentioned.

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(n) Post, Appendix, 460. still in force, see post, Appendix, 1048.  
The 10th section, which sub-  
jects parties to a penalty, is

(o) Post, Appendix, 470.

By the 5 Ann. c. 14. s. 4. (*p*) and the 9 Ann. c. 25. and the constructions upon it (*q*), and by the 48 Geo. 3. c. 93. (*r*) two other qualifications are allowed, and lords and ladies of manors, as such, and one gamekeeper for each manor, are authorized to kill game within their manors.

These different statutes appear to require one of three descriptions of qualifications to authorize a person to kill game, and to keep dogs or engines for that purpose. The *first* relates to privileged places, and enables the owners and keepers of forests, parks, chases, or warrens, and lords of manors to kill game. The *second* to a person who has not any estate in his own possession, but who is the son and heir apparent of an esquire or of other person of higher degree; and the *third* qualifies persons having a certain interest in real property (*s*). We will now consider the different decisions on the statutes, with reference to these qualifications.

The Stat. 22 and 23 C. 2. c. 25. by prohibiting persons not being *owners and keepers of forests, parks, chases, or warrens*, from having the dogs and engines therein mentioned, impliedly authorizes the owners and keepers of those franchises to keep them. And with reference to the previous acts of 2 J. 1. c. 27. s. 6. and 7. J. 1. c. 11. s. 6. these persons seem qualified in

(*p*) Post, Appendix, 479, 480. 482.

(*q*) Post, Appendix.

(*r*) Post, Appendix, 690.

(*s*) See observation of Abney, J. in Mallock v. Eastley. 7 Mod. 482.—Post, Appendix, 1102.

1st. Owners of forests, parks, chases, warrens, and lords of manors.



1st. Owners  
of forests,  
parks, chases,  
and lords of  
manors.

respect of their forests, &c. to kill game within their franchise.

With respect to *lords of manors*, it was expressly provided by the 2 J. 1. c. 27. s. 6. (t) that every lord of a manor may, by himself or his menial servants, take pheasants or partridges on his manor. But lords of manors not being mentioned in the excepting clause of the Stat. of C. 2. which requires a qualification of 100*l.* a year, and the right of a lord of a manor not being recognized in express terms by the 5 Ann. c. 14. or 9 Ann. c. 25. which give him a power to appoint a gamekeeper to kill game, it was doubted whether he, merely as lord of a manor, and without having an interest in the land of 100*l.* per ann. is qualified to kill game. However in the case of *Mallock v. Eastley* (u) the Court appear to have considered, that a *person merely as lord of a manor is qualified to kill game within it*. It was argued that every lord of a manor was qualified to kill game, for that, as by the abovementioned statutes he may authorize a gamekeeper to kill game and seize guns, it would be absurd to say that the lord of a manor has not such power himself, for it would be degrading him below the privileges of his servant. And Willes, Ch. J. said, “ I have some doubt whether defendant, as

(t) Post, Appendix, 424.

(u) 7 Mod. 482.—Post, Appendix, 1093 to 1103.—See also *Rex v. Pickles*, cited in the *King v. Jarvis*, 1 Burr. 148. post, Appendix, 1111. 1115.—*The Queen v. Matthews*, 10 Mod. 26.—Post, Appendix, 1010.

lord of a manor simply, is not qualified to kill game within his own manor. It seems a little odd that the servant of a lord of a manor may kill game, and yet the lord himself not do it without being punished by a penalty." And Abney, J. said that lords of manors have not a general qualification to kill game every where, but are stinted and confined to the precincts of their own manors. And Burnet, J. was of opinion that the lord of a manor is entitled to kill game within his manor, as well as his gamekeeper, yet he thought he would be liable to the penalty if he used a gun to destroy game out of the boundaries of his manor. And it may now be considered as settled, that every person who is lord of a manor is qualified, as such, to sport within his manor, but if he have no other qualification he will be liable to the same penalties as any other unqualified person, if he sport out of his manor.

1st. Owners of forests, parks, chases, and lords of manors.

A qualification, or rather an authority, to kill game is given to a *gamekeeper* appointed by the lord or lady of a manor, or other royalty. The Stat. 7 J.1. c. 11. s. 7. authorizes a person, having free warren, and a lord of a manor, and freeholder of 40*l.* per ann. to appoint his menial or household servant to kill pheasants and partridges in the day-time, upon his master's free warren, manor, and freehold. The Stat. 22 and 23 C. 2. c. 25. s. 2. (v) authorized lords of manors or

Gamekeeper.

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(v) See the statement of this and the subsequent act, as

Gamekeeper. other royalties, not under the degree of an esquire, by writing under their hands and seals, to appoint one or more gamekeepers within their respective manors or royalties. But as gamekeepers, thus appointed, had merely a power to preserve game, it was provided by 5 Ann. c. 14. that any lord or lady of his or her respective lordship or manor, may empower their gamekeeper upon their lordship or manors to kill hares, pheasants, partridge, or other game for the use of such lord or lady only; but the Statute 9 Ann. c. 25. reciting that the appointment of several gamekeepers tends to the destruction of the game, enacts that only one gamekeeper shall be appointed to kill game within any one manor, and that the name of such gamekeeper shall be entered with the clerk of the peace of the county, riding, or division wherein the manor lies, and the clerk of the peace shall for 1s. give him a certificate of such entry; and if his name is not so entered he is then liable, as if he had not been appointed gamekeeper, unless he be otherwise qualified in his own right.

By the 3 Geo. 1. c. 11. (a) it was enacted, that the lord of a manor should not appoint any one to kill game, unless he was qualified in his own right, or be really the servant of the lord, and employed to kill game for his sole use. But this statute was repealed by 48 G. 3. c. 93. (1) by

to gamekeepers, in *Rogers v. Carter*, 2 Wils. 387.—Post, Appendix, 1150, 1.

(a) Post, Appendix, 504.

(1) Post, Appendix, 691.

which any lord or lady of any manor is em- <sup>Gamekeeper.</sup>  
 powered to appoint any person whatever, whe-  
 ther qualified or not, to be gamekeeper to his  
 manor, and to kill game there for the use of any  
 person, but it is to be specified in the deputation  
 whether qualified or not, and such person is in-  
 vested with all the privileges of a gamekeeper  
 appointed under former acts. The Stat. 48 G. 3.  
 c. 55. s. 9. (y) which relates to the certificate,  
 enacts that no gamekeeper shall thereby be  
 enabled to use any dog or engine out of the pre-  
 cincts of the manor or royalty, for which such  
 deputation was granted.

We have already considered what is a lawful <sup>What manor  
 or royalty  
 sufficient.</sup>  
*manor*, with reference to the game laws. The  
 Statute 22 and 23 C. 2. c. 25. s. 2. besides  
 manors, mentions "*other royalties.*" So that  
 under that statute the owner of a *free warren* or  
 other *royalty* has undoubtedly a right to appoint  
 a gamekeeper to *preserve* game (z). But the  
 5 Ann. c. 14. s. 4. which introduces the power to  
 appoint a gamekeeper to *kill* game, only men-  
 tions *lordship*, or manor ; and the 9 Ann. c. 25.  
 and the subsequent acts merely mention *manors*,  
 with respect to the appointment of gamekeepers.  
 It has been held (a), that the lord of a *hundred*, or  
*wapentake* cannot grant a deputation to a game-

(y) Post Appendix, 684.

(z) See Appendix, 1175.

(a) *Ld. Aylesbury v. Pat-*  
*tison*, Dougl. 28.—Post, Ap-  
 pendix, 1172.—In Com. Dig.

tit. Justice of Peace, B. 46.

Lutw. 1506. is referred to  
 as shewing that an hundred,  
 with a leet, is a royalty with-  
 in the statute.



What manor  
or royalty,  
sufficient.

keeper, a wapentake not being a royalty within the meaning of these statutes. And Lord Mansfield there said, “ that all acts in *pari materia* are to be taken together, as if they were one law. In the Statute C. 2. the words, ‘ other royalties,’ are used, but that must mean *royalties of the same nature with manors*; if royalties of a higher nature had been meant the statute would have begun with them; the reason why this word was used in the Act of C. 2. was, because such royalties go by different names in different parts of the kingdom, as honours, baronies, fees, &c.; but in the Act 5 Ann. c. 11. the words are only lordship or manor; and the Acts of 9 Ann. and 3 Geo. 1. recite the others, and only mention lords and ladies of manors.” It is observable that by the 7 J. 1. c. 11. s. 7. owners of free warrens are authorized to appoint their menial servants to kill game on their own free warrens, and that owners of warrens are mentioned in the preamble of the 22 and 23 C. 2. c. 25. and in *Keeble v. Hickringill (a)* the Court are reported to have said, that the word royalty signifies a free warren. Hence it should seem, that the owner of a free warren is authorized to appoint a gamekeeper to kill game within his franchise.

What title to  
the manor  
necessary.

Where a person has a *colourable title* to a manor or lordship, he may under these statutes appoint a gamekeeper to kill game, and the court will not suffer an inquiry into his title in an action

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(a) 11 Mod. 74.—Post, Appendix, 1006.

for the penalties, nor can disputed boundaries of a manor be settled in that form of proceeding (b). What title to the manor necessary.

But if there be no pretence for a claim to the manor, the penalties of the game-laws will attach upon the game-keeper, and the circumstance of his acting *bonâ fide* will constitute no defence (c). It may be collected from the case of *Webb v. Earl of Shaftesbury* (d) that a devisee of a manor in trust may appoint a gamekeeper merely for the preservation of the game, but not for the purposes of an establishment for pleasure to the trustee.

The statute of Charles requires that the lord of a manor, or royalty, who may appoint a game-keeper, shall not be under the degree of an *esquire*. Lord of manor need not be an esquire. This qualification is not mentioned in any of the subsequent acts. And though in the case of *Jones v. Smart* (e), in which Willes, J. differed from the rest of the court, he seems to have considered this as a subsisting regulation, we find that in the prior case of *Mallock v. Eastley* (f), Willes, Ch. J. said, "Though the Stat. of Charles the Second empowers all lords of manors not under the degree of 'esquire' to empower gamekeepers to preserve the game, &c. and the present defendant is only styled 'gentleman' upon re-

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(b) *Hawkins v. Bailey*, and 1243 to 1247.

*Blunt v. Grimes*, post, Appendix, 1244; and *Phillips*

*v. Davis*, 8 East. 179. (d) 7 Ves. J. 488.

(c) *Calcraft v. Gibbs*, 4 Term Rep. 681. 5 Term Rep. 19. and post, Appendix,

(e) 1 Term Rep. 44. post, Appendix, 1203.

(f) 7 Mod. 482. post, Appendix, 1101.

Lord of manor need not be an esquire.

cord, yet that will be no obstruction to his qualification, because the subsequent statutes speaks of 'lords and ladies of manors,' without confining them to any degree of gentility; and a lady of a manor cannot bear the title required by the Statute of Charles the Second. So that at present, I think, a lord of a manor may make gamekeepers, though under the degree of an esquire (g). And this seems to be clearly established by the decision that a corporation (to which such titles cannot be applied) [may appoint a gamekeeper (h)].

Only the lord of a manor, or lordship himself, can appoint; for as observed by Lord Kenyon in *Calcraft v. Gibbs* (i), "a man cannot convey to another the power of appointing a gamekeeper without a conveyance also of the manor itself. Such a power is a mere emanation of the manor, and inseparable from it; it is a mere shadow accompanying the substance."

Who may be appointed gamekeeper.

Before the 48 Geo. 3. c. 93. (k) it was decided, in the case of *Rogers v. Carter* (l), that any person, though neither qualified nor a menial servant to the lord of the manor, might be appointed to kill game; for that the Stat. 3 Geo. 1. never was meant to check or hinder lords, living at a distance from their manors, from appointing

(g) The late Mr. Sergt. Williams gave a decided opinion upon this point.

(h) *Spurrier v. Vale*, 1 Camp. 457.—10 East. 413. And post, Appendix, 1152 to 1156.

(i) 5 Term Rep. 19. post Appendix, 1247.

(k) Post, Appendix, 691.

(l) 2 Wils. 387. post, Appendix, 1151.

any person whatever to kill game for the immediate use of the lord: if it was otherwise, this act would take away the right of every lord living at a great distance from his manor. However until the Statute 48 Geo. 3. c. 93. the gamekeeper could only kill game for the immediate use of the lord. It has been recently decided, that bodies corporate, who are lords of manors, may appoint any unqualified person, though he were the menial servant of another, as gamekeeper to kill game upon their manor, and that it would be presumed, until the contrary appeared, that he killed the game for the use of the corporation (*m*). But a gamekeeper, who sold or disposed of game without the consent or knowledge of the lord of the manor, was subject to three months imprisonment, and hard labour (*n*), a regulation which still subsists as to gamekeepers expressly appointed to kill game for the use of the lord. And the 3 Geo. 1. c. 11. (*o*) subjects any unqualified person, not being truly and properly a servant of the lord of the manor, or not immediately employed and appointed to take and kill game for the sole use or immediate benefit of the lord, and who, under colour or pretence of a deputation, kills game, or keeps dogs or engines for that purpose, to the same penalties as other unqualified persons killing game for their own

Who may be  
appointed  
gamekeeper.

(*m*) *Spurrier v. Vale*, 1  
Camp. 457.—10 East. 413.—  
Post, Appendix, 1152 to 1156.

(*n*) 5 Ann. c. 14. s. 4. post,  
Appendix, 480.

(*o*) Post, Appendix, 505, 6.



Who may be appointed gamekeeper. use. But the 48 Geo. 3. c. 93. (*p*) enables the lord of a manor to depute any person whatever as a gamekeeper, with authority to kill game for his own use, or for the use of any other person, the deputation to state whether the person be qualified or not.

Form of deputation.

The *deputation* (*q*) we have seen must be under hand and seal (*r*): but the statute does not seem to require the deputation to state that the gamekeeper is to kill game for the use of the lord only, though this is commonly mentioned in the ordinary appointment of a gamekeeper; it has been recently held that those words are not necessary (*s*). The deputation of a person to kill game for his own use under the recent Stat. 48 Geo. 3. c. 93. states the authority accordingly, and mentions whether the party be qualified or not (*t*).

Gamekeeper must not sport off his manor, and consequences.

All the statutes expressly confine the power of the gamekeeper to kill game within the limits of the manor, and if he kill game, or use guns or dogs for that purpose out of the limits of his manor, he is liable to the same pecuniary penalties as any other unqualified person; but neither a justice of the peace, or any other gamekeeper can legally seize his dogs or gun (*u*). And Lord Mansfield in *Rogers v. Carter* (*x*) said, "If the

(*p*) Post, Appendix, 690. 1352.

(*q*) See form, post, Appendix, 1173.

(*r*) Ante, 44.

(*s*) *Spurrier v. Vale*, 1 Camp. 457.—Post, Appendix,

(*t*) Post, Appendix, 691.

(*u*) *Rogers v. Carter*, 2 Wils. 387.—Post, Appendix, 1152, 3.

(*x*) Ibid.

gamekeeper killed game where he was not a game-keeper, he might have been convicted in the penalty of 5*l.*; but he was entitled to keep and have dogs, guns and nets for the taking and killing of game any where; and therefore the justice had no right to take the guns from him. It would be confounding the right of keeping with the right of using the gun to say otherwise, and we cannot think the legislature had any such meaning, and, upon the whole, we are of opinion, that the gun of a gamekeeper of a manor cannot be seized either *cundo vel redeundo*, or any where else." And as already observed, where the boundaries of a manor are in dispute, the question cannot be tried in an action for the penalties against a gamekeeper who has been killing game on the place in dispute (*y*).

Gamekeeper  
where he  
may sport.

The second description of qualification is founded upon the Statute 22 and 23 C. 2. c. 25. (*z*), which contains the following words: "*other than the son and heir apparent of an esquire, or other person of higher degree.*" The omission of the word "*of*" before the words "*other person*," has created doubts whether the statute meant to qualify the persons of such

2. Qualification as son and heir apparent of an esquire, or of a person of higher degree.

(*y*) *Hawkins v. Bailey*, post, Appendix, 1244, and *Phillips v. Davis*, 8 East. 179. A gamekeeper guilty of disobedience may be discharged forthwith without notice, unless there has been a special agreement to the contrary, *Moore*. 8 and 9. and his residence in a house by permission of the lord of the manor is lawful only whilst gamekeeper. *Lit. Rep.* 139.

(*z*) *Post*, Appendix, 445.

2. Qualification as son and heir apparent of an esquire, or of a person of higher degree.

higher degree themselves, or only their eldest sons.

It was at length settled, in the case of *Jones v. Smart* (*a*), Willes, J. dissenting, that the qualification only extended to the eldest sons. All the

prior acts we have seen contain the word "*of*," omitted in this act, and though it was urged by Willes, J. "that many unaccountable absurdities must flow from this interpretation, and that the eldest son of a barrister at law, or of a captain in the army or navy, will be qualified as such, yet the father himself will not. Even a peer, who is not qualified by property, will not be privileged to hunt or kill game; though his son, who claims through him, will have that privilege. The act could never mean to annex the qualification to land only; the term esquire has no relation whatever to landed property, for no landed estate, however large, will confer the title; but it must be acquired either by office, the king's patent, or some of the means laid down by Selden and Camden." But this argument was answered by the other judges, and Lord Mansfield said, "To be sure absurd consequences may seem to follow from giving a privilege to the son which the father has not, but the question is, has the statute done it or not?" And Ashhurst, J. said, "The Game Laws are rather to be considered as positive rules than as founded on reason; therefore it is safer to adopt what they have actually said, than to suppose

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(a) 1 Term Rep. 44.—Post Appendix, 1203.



what they meant to say. Though by the Statute of James I. rank as well as property gave a qualification; yet under this Statute of Charles the Second a man can only be qualified by means of property. But, said the legislature, the heir apparent, who is in the line of succession, shall likewise be qualified, from a supposition that the esquire was so already. According to which construction I cannot think that it was their intention purposely to exclude the father, but in fact they have done it; and the matter is put out of all doubt by the Statute of James, which expressly excludes them; and so does the Statute of Charles the Second, as effectually, in my opinion. The blunder has been adopted perhaps without meaning it." And Buller, J. said, "It is asked what reason is there for excepting the elder son alone, and not the younger? The only reason that can be given is, because the eldest son is presumptive heir to the real estate, which is a further argument for supposing that landed qualification was the immediate object of the statute; and in fact this Act of Charles 2d. had that principally in view, for it repeals the personal qualification of the Statute of James, and leaves no other qualification but that of land, with the exception in favour of the heir apparent, on account of his right of succession. And we may observe that there is the same exception introduced into the act for qualification of members of parliament.

2. Qualification as son and heir apparent of an esquire, or of a person of higher degree.



2. Qualification as son and heir apparent of an esquire, or of a person of higher degree.

I have no doubt that the legislature took it for granted, that esquires themselves would be qualified in respect of their land; and for the reason assigned extended the qualification to their eldest sons. So that had the legislature been asked, at the time of making this act, whether they intended to exclude the younger sons of dukes? they would have answered No. But I am as firmly persuaded, that had the same question been put to them respecting doctors, they would have answered in the affirmative. Be that as it may, we are bound to take the act of parliament as they have made it; a *casus omis-sus* can in no case be supplied by a court of law, for that would be to make laws; nor can I conceive that it is our province to consider whether such a law that is passed is tyrannical or not. But the strong ground of all is, that all the acts relative to game have been from time to time restrictive of the right to kill game. They abolish some qualifications, and raise the others, and consequently lessen the number of qualified persons; and no one statute can be construed into an enabling one.

It follows as a necessary consequence from this interpretation of the statute, that although the son and heir apparent of an esquire, or of other person of higher degree, is qualified by the Statute of Charles the Second, though his father may have no landed property, yet an esquire or person of higher degree is not *himself*

as such qualified. We have therefore only to consider who is an esquire or person of higher degree within the meaning of this statute. It is observed by Sir Wm. Blackstone (*b*), that it is somewhat unsettled, what constitutes the distinction, or who is a real *esquire*, for it is not an estate, however large, that confers this rank upon the owner. Camden, who was himself a herald, distinguishes them the most accurately, and he reckons up four sorts of them; 1st, The eldest sons of knights, and their eldest sons in perpetual succession; 2d, The eldest sons of younger sons of peers and their eldest sons in like perpetual succession, both of which species of esquires Sir Henry Spelman entitles *armigeri natalitii*; 3d, Esquires created by the king's letters patent, or other investiture, and their eldest sons; 4th, Esquires by virtue of their offices, as justices of the peace, and others who bear any office of trust under the crown, but however this must be understood not to be every description of officer under the crown; but only such as are styled esquires by the king in their commissions and appointments, who being all honoured by the king with the title of esquire, have a right to that distinction for life. To these may be added the esquires of knights of the bath, each of whom constitutes three at his installation; and all Scotch, Irish, and foreign peers; for not only these but the eldest

2. Qualification as son and heir apparent of an esquire, or of a person of higher degree.

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(*b*) 1 Bla. Com. 406.

2. Qualifications as son and heir apparent of an esquire, or of a person of higher degree.

sons of peers of Great Britain, though frequently titular lords, are only esquires in the law, and must be so named in all legal proceedings. And though Sir Henry Spelman disputes the claim of barristers to this title, yet it has been held that they must be so entitled in all legal proceedings (c); and it appears from the case of *Jones v. Sinar* (d), that the eldest son of a barrister is qualified as such to kill game. In the same case it was considered that a captain in the army or navy is an esquire for the purposes of this act. But in a recent case (e) it was held that a commission of captain of volunteers, signed only by the lord lieutenant of the county, styling him an esquire, does not confer that degree, and consequently that his eldest son is not thereby qualified to kill game. And the Court in that case observed that though the Stat. 44 Geo. 3. c. 54. s. 26. enacts that all officers in corps of volunteers, having commissions from lieutenants of counties, shall rank with the officers of his majesty's regular forces, yet that statute meant only the same military rank, and that the lord lieutenant of the county could not confer honours.

With respect to "*who are persons of higher degree*," a table of precedence is given by Sir William Blackstone (f), and it appears by it,

(c) 1 Wilson. 244.—1 Bla. Com. 406. n. 20.

(d) 1 Term Rep. 44. and Post, Appendix, 1210.

(e) *Talbot v. Eagle*, 1 Taunt. 410.—Post, Appendix, 1357.

(f) 1 Bla. Com. 405, 6.



that doctors in the learned professions are the next superiors in degree to esquires. But a diploma, conferring the degree of doctor of physic, granted by either of the universities in Scotland, does not give a qualification to kill game under this statute (*g*). It was contended, in the case of *Jones v. Smart* (*h*), that a Scotch doctor was of equal degree with an English one, as a member of the civil state, and that the 4th article of the Act of Union says, there shall be a communication of all rights, &c. except where it is agreed on to the contrary, and that, though as to the College of Physicians, and the two universities, who refuse to allow to Scotch doctors their own privileges within their respective jurisdictions, they, as private corporations, have a right to make what regulations they please concerning their own bodies, yet, as to all general immunities derived from the common law, or under the Act of Union, they cannot deprive any body of these. Yet Lord Mansfield said, "There is not a colour for saying that the defendant is qualified by the Act of Union. It is true that, by the 4th article of that Act, the Scotch have the same general privileges as the English, but then they must have the same qualifications, otherwise they come not within the same description, for the general article, which declares there shall be a communication of all privileges, can only

2. Qualification as son and heir apparent of an esquire, or of a person of higher degree.

As to a serjeant, 2 Mod. Term Rep. 44. post, Appendix, 1203.

(*g*) *Jones v. Smart*, 1 (*h*) *Id. ibid.*



2. Qualification as son and heir apparent of an esquire, or of a person of higher degree.

mean such as are of a general nature. A burgess of London is endued with certain privileges to which a burgess of Edinburgh has no claim ; so in every case where a privilege is of a qualified nature, it must be understood with that qualification. A doctor of the English universities may become a member of the College of Physicians, may plead in Doctors' Commons, and has various other privileges, from all of which a Scotch doctor, as such, is excluded. The qualifications, therefore, must be from Oxford or Cambridge. In like manner, the statute allowing men of certain degrees to have dispensations for holding two livings, necessarily refers to such degrees only as are obtained in an English university ; for the church of Scotland is distinct from ours, and admits not of the same rules: Therefore whatever rank the defendant may hold by curtesy, he is not, in point of law, to be considered as a doctor to this purpose.

3. Qualification in respect of estate.

The *third* description of qualification, is a certain *interest in real property*. The statute of Charles prohibits from keeping or using dogs, or engines there enumerated, "all and every person or persons not having lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly value of 100*l.* per annum, or for term of life, or having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150*l.*" This clause may be considered under the three following heads:

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| 1. With respect to an estate of inheritance. | 3. Qualification in respect of estate. |
| 2. An estate for life.                       |  |
| 3. A leasehold estate.                       |  |

1. Estate of inheritance.

The words of the Statute are, "That all and every person and *persons* not having lands and *tenements*, or some other *estate* of inheritance, in his own or his wife's right, of the *clear* yearly value," &c.

With respect to the words "person or persons," though there is no express decision upon the point, it should seem, that in order to qualify tenants in common, and joint tenants, the clear annual value of the estate must be sufficient to qualify every one separately if the estate were divided; and consequently, that if two joint tenants, or tenants in common, were seised of an estate of inheritance of less than the annual value of two hundred pounds, neither would be qualified; the object of the statute was to confine the permission to sport to persons who had a clear annual income of 100*l.* derived from real property; and though, in legal contemplation, joint tenants and tenants in common have respectively an interest over every part of the estate, yet their real beneficial interest is the same as if each were separately possessed only of his own share. If it were otherwise, the objection of Willes, Ch. J., in *Mallock v. Eastley*(*i*), that a hundred people might be qualified by one

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(*i*) 7 Mod. 482. post, Appendix, 1101.

## 1. Estate of inheritance.

and the same estate, by jointly purchasing an estate of 100*l.* per ann. which would entirely defeat the object of the legislature (*k*).

The statute is silent as to the nature of the tenure of the estate of inheritance, and as the object of the legislature was merely to require a certain interest in real property, a copyhold of inheritance of the clear annual value of 100*l.* is a qualification within the statute (*l*).

The words of the Stat. 2 J. 1. c. 27. s. 3. & 6. (*m*) and of the 3 J. 1. c. 13. s. 5. are “lands, tenements, *or* hereditaments.” The words of the 7 J. 1. c. 11. s. 7. are, “lands, tenements, *and* hereditaments;” but the words of the last qualification act are, “lands *and* tenements.” Under these words, not only land, but property on which game cannot exist, as houses, &c. are included; the term tenement is defined by Sir William Blackstone (*n*). For the purposes of the game laws, a rent charge will give the owner a qualification.

The word *having* means an estate in possession, and not in reversion; and therefore, in the case of *Mallock v. Eastley* (*o*), where it appeared that the defendant was seised in fee simple of the moiety of a manor, with the appurtenants, the

(*k*) Vide post, and Appendix, 1199.

(*l*) See *Wetherell v. Hall*, Cald. 230. and post, Appendix, 1193.

(*m*) Post, Appendix, 420.

(*n*) 2 Bla. Com. 16. As

to the interest of a mortgagee, and the owner of a rent charge, see *Wetherell v. Hall*, post, Appendix, 1193 to 1200.

(*o*) 7 Mod. 482. post, Appendix, 1093.

demesnes of which moiety, if they had been in possession, would have been worth 120*l.* per ann. ;<sup>1. Estate of inheritance.</sup> but at the time of the offence, were leased out to several tenants for 99 years, determinable on the death of one, two, or three persons, under certain yearly reserved rents, amounting in the whole to only 15*l.* 13*s.* in the year ; it was held that he was not qualified. It was argued, with reference to the prior statutes, that the reason why the legislature restrained the power of killing game to particular incomes, was, that persons who could not spend so much yearly for their families, might not lose their time and neglect their business in the idle diversion of sporting and shooting game. And though, on behalf of the defendant, it was urged that a reversion is a tenement and hereditament in notion of law, within the meaning of the statute, and that there being no estate of freehold intervening, the possession of the lessee for years was the possession of the reversioner. But Willes, Ch. J., said that this was no qualification, neither within the words or meaning of the Statute of Charles. The words are, "*having an estate,*" and a man cannot be said to have an estate when another is in possession of it, and he himself has only a nude reversion, or at least not attended with rents sufficient to make up his other yearly income a qualifying estate ; and it would be a strong thing to say, that a man entitled to a bare reversion of 1000*l.* yearly value, after the expiration of 1000 years, should be said to be qua-



## 1. Estate of inheritance.

lified within this act to kill game. But the next words are stronger, “ of the clear yearly value,” which must mean payable to him who is intended to be qualified. But this case is less within the meaning of the statute ; for it appears from the former Acts, and the Statute of Charles the Second, and the meaning of them, that persons not having sufficient incomes to maintain themselves and families, (and therefore the statute fixes the income,) should not destroy their time in these idle diversions or occupations of killing game. If then reversions or remainders were to be qualifications, a hundred people might be qualified by one and the same estate, by limiting remainders properly one after the other. Suppose a man has 100*l.* a year, and owes as much as it is worth, by the construction contended for, he may sell it for 1000 years ; and if the reversion is a qualification, he is still qualified, though a beggar.

## An equitable estate sufficient.

But it is not necessary that the person should have a *legal* estate ; it is sufficient if he have an *equitable* interest of inheritance, of the clear yearly value of 100*l.* and bare possession of an estate, or receipt of the rents and profits is *primâ facie* evidence of ownership, and throws the onus probandi of the contrary on the opposite party (*p*). The Stat. 2 J. 1. c. 27. s. 3 & 6. uses the word *seised*, but the Stat. C. 2. only says *having*, &c. In the case of *Wetherell v.*

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(*p*) *Wetherell v. Hall*, 1193. Cald. 230. post, Appendix,

Hall(*q*), it was held that a legal estate was necessary to constitute a qualification to kill game; <sup>1. Estate of inheritance.</sup> that a mortgagor has no more than an equitable estate in the mortgaged premises; that such estate cannot be taken notice of by a court of law, in the construction of an act of parliament; and that by the Statute of Charles, an estate of an annual value less than 150*l.* must be of an inheritable nature to give a qualification; and that a mortgagor, so far from having an interest of this character and description, is only tenant at will to the mortgagee. But Lord Mansfield intimated that it would be difficult to support this ground of argument. On the other hand, it was insisted that an equitable estate is sufficient; that in deciding on points of this nature, the substance ought principally to be regarded; that the cestui que trust was substantially the owner; that courts of law in many instances, advert to the practice of a court of equity, as in the common case of a trustee, who is not permitted to eject his cestui que trust. How then is a mortgagor considered there? The mortgage is in substance a specialty debt; the equity of redemption is considered as real estate, and descends to the heir of the mortgagor, who is considered as a debtor, and his personal assets liable, in the first instance, to discharge the mortgage; and though at law, the heir of the mortgagee takes a legal estate, yet the personal representatives are con-

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(*q*) *Wetherell v. Hall*, 1193.  
*Cald.* 230. post, Appendix,

## 1. Estate of inheritance.

sidered as entitled to take the benefit and receive the mortgage debt. It was further insisted that a mortgagee can never get possession, if the mortgagor is ready to pay the money ; that by the Stat. 7 Geo. 2. c. 20. s. 1. it may be paid *pendente lite* ; and that, if the legal estate only were to be regarded, an estate of 1000*l.* per ann. mortgaged for 100*l.* would not furnish a qualification.

And Lord Mansfield said, “ We consider the defendant’s interest in this court, just as it would be considered in a court of equity. And in the case of the Earl of Ferrers v. Henton (*r*) the same point was ruled. And the late Mr. Sergeant Williams (whose profound knowledge of the law entitled his opinions to the greatest respect) advised that as the statute does not say *seised* of lands and tenements, even a person who was in possession of an estate under a contract of purchase for a valuable consideration, and has paid the purchase money, or is ready to pay it, is qualified, being in equity considered as the next owner of the estate, and as the person who alone has such estate, the person selling from the time of the articles being only a trustee for the purchaser, and the latter being the beneficial owner of the estate, but that if he had not been let into possession, and into the receipt of the rents and profits of the estate, it would be otherwise within this statute. He proved this position by shew-

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(*r*) 8 Term Rep. 506.— also *Amherst v. Skynner*, 12 Post, Appendix, 1270.—See *East*. 263.



ing that if the purchaser were then to make his will and devise the estates which he was so equitably entitled to, and afterwards the legal estate in them were conveyed to him, he need not republish his will, for they passed before by the will, and although at law the conveyance would be a revocation of the will, it would not be so in equity, according to the case of *Green v. Smith*, 1 Atk. 573. for if the vendor, before the conveyance of the legal estate according to the articles, were to confess a judgment to a third person who has even no notice of the articles, yet this judgment would not in equity affect the estate, as appears from *Finch v. Earl of Winchilsea*, 1 P. Wms. 278. and the learned Sergeant concluded his opinion by stating that these instances, among many more that might be mentioned, prove that an equitable estate is sufficient within the statute, in as much as they shew that the *cestui que* trust is a person *having* lands and tenements.

1. Estate of inheritance.

But though an equitable interest is sufficient, it is necessary that it should be of the *clear* annual value mentioned in the statute (s). We have adverted to this in considering the necessity of having an estate in possession. If the estate be reduced below the clear yearly value of 100*l.* by a rent charge, mortgage, land tax, or any other incumbrance, the owner is not thereby qualified.

The estate must be of the *clear* value mentioned in the statute.

(s) The statute contains the word "clear," though Abney, J. said, in *Cay's Abridgment* of this Stat. the word clear is omitted, post, Appendix, 1102.



The estate must be of the clear value mentioned in the statute.

The leading decision on this point is the case of *Wetherell v. Hall* (t), in which it appeared that the defendant, who was prosecuted for the penalty of 5*l.* for using a gun without being qualified, and that he was seised in right of his wife in an estate of inheritance of the clear yearly value of 103*l.* which was mortgaged to secure 400*l.* and interest, which interest had been regularly paid, and that the mortgagee had not entered into possession of the mortgaged property. It was argued for the plaintiff, that in point of annual value, the defendant had not, upon the true construction of the act of parliament, an estate sufficient to qualify him. The words of the act are "The clear yearly value of 100*l.*" that this could not mean the gross value of the estate, but must mean the net income; that such it could not be, if, by incumbrances of any sort, the issues and profits were brought within that sum; that the object of the legislature was to entitle those only, whose independence arising only from the produce of their lands, would enable them to use these rights for the purpose of amusement; that upon comparing the value of the land at the time this law passed with its present value, it would be found that the measure of this independence had already been reduced much below the intention of the legislature; that if the construction contended for were admitted, no degree of interest what-

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(t) *Cald. Rep.* 230. — *Rex v. Clark*, 8 *Term Rep. Post*, Appendix, 1193. — 220, *post*, Appendix, 1264.

soever in the produce of lands would be necessary, and the intention of the legislature must be totally frustrated; inasmuch as the holder of an estate, whether he charged it himself to its utmost value, or had it transferred to him under such charge, without having or ever having had an interest arising out of land to the amount of one farthing, must in such case be entitled. On the other hand, for the defendant, it was urged that this doctrine must make all persons of whatever ostensible estate disclose their private circumstances; that if every private family transaction in money concerns were to be laid open, it would be investing justices and informers with powers of harassing the country. But Lord Mansfield said, "The privilege here is given to property, and the cestui que trust, the mortgagor, is really the owner, the trustee, the mortgagee, is merely nominal. We consider the defendant's interest in this Court as it would be considered in a court of equity. It is an interest subject to the payment of the mortgage; it is a qualification of property; and though it is not necessary that he should have a legal estate, he must have such property in the land as shall produce a clear income of 100*l.* per ann. or it might be carried so far as that he might have nothing, and yet enjoy the privilege. What then are mortgagor and mortgagee in Chancery? One the owner, the other as having a charge upon the land; and the charge goes with it." And Buller, J. said, "The only point here is whether the words 'clear yearly value,'

The estate must be of the clear value mentioned in the statute.

The estate must be of the *clear* value mentioned in the statute.

mean clear yearly value to the person in possession. The words of this act would by themselves leave but little room for doubt; but when supported and explained by the Statutes of King James, in *pari materia*, the words of which are, ‘over and above all charges and reprises,’ it can no longer admit of question, but that it must mean clear value to the person in possession: for by the common rule of construction all statutes upon the same subject are considered as making one system of law, and consequently the words in the two last statutes must be referred to the statute in question.” But the deduction of the property tax on an estate, in other respects of the clear annual value of 100*l.* will not be considered as affecting the qualification.

2d. Estate for life.

With respect to an *estate for life*, it was determined in *Lowndes v. Lewis* (*u*), that a life estate of less than 150*l.* per ann. is not a qualification to kill game. This construction of the statute (*v*) was contrary to the previously received opinion, as to its meaning. Sir Wm. Blackstone (*w*) appears to have considered that a freehold estate of 100*l.* per ann. whether of inheritance or for life, was sufficient, and that the expression of 150*l.* per ann. was confined to a leasehold for 99 years. Mr. Justice Willes, in the above-mentioned case, was of the same opinion, and observed, “That construing this act as it

(*u*) Cald. Rep. 188. — s. 3. Post, Appendix, 445.  
Post, Appendix, 1183. (*u*) 4 Bla. Com. 175.

(*v*) 22 and 23 C. 2. c. 25.



ought to be construed by itself, and reading it <sup>2d. Estate for life.</sup> without adverting to what might or might not pass at the time in the minds of the framers of it, it plainly gives, agreeably to the general understanding and practice, a qualification to all such as own a freehold of 100*l.* per ann. In the clause of the act, which is the subject of debate, there are two distinct branches of sentences, the sense of each of which is governed by the word ‘having,’ the break or pause is where that word is taken up a second time, and there a new direction, a new sense and sentence begin.” But the other judges were of a different opinion, and thought that in order to give sense to the act the word “having” must be rejected, in which case it would be clearly necessary that the estate for life, as well as the lease for years, must be of the value of 150*l.* per ann.; and Mr. Justice Buller thought that the question should be considered with reference to the former acts in *pari materia*, and relied on the mode in which the statute is analyzed in Lord Ch. Baron Comyns’s Digest (*x*), and on the precedent in Burn’s Justice (*y*). The prior acts (*z*) are very explicit, and make an express distinction between an estate of inheritance and an estate for life, and make no mention of an estate for years; requiring an estate of in-

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(*x*) Com. Dig. tit. Justices of Peace, B. 43.—Bennett v. Talbot, 5 Mod. 307. was also alluded to; but it is observable that this was not made a point in the case, see post, Appendix, 1188. n. b. nor is it noticed in the other reports of that decision, see post, Appendix, 981.

(*y*) 4 Vol. 175.

(*z*) 2 J. 1. c. 27. post, Appendix, 423.—7 J. 1. c. 11. post, Appendix, 434.



2d. Estate for life. inheritance to be of the annual value of 10*l.*, an estate for life of 30*l.*, and goods or chattels to the value of 200*l.*; afterwards increased as to the estate of inheritance to 40*l.*, as to the life estate to 80*l.*, and as to goods and chattels to 400*l.* It was urged in the case of *Lowndes v. Lewis* (*a*), that the inference from these acts was favourable to the construction of an estate for life of 100*l.* per ann. being a qualification, because if those acts lay before the legislature when they passed the Statute of Charles, and if they were apprized of the distinctions which those acts made, and have omitted them, or even imperfectly expressed them, it must be presumed that they were purposely omitted. It may, however, be answered that the legislature being aware that a distinction had already been introduced, with respect to the annual value of an estate of inheritance, and of one for life only, in attempting to express their meaning in more concise language, and in introducing the new qualification of an estate for years, fell into this ambiguity; and there can be no reason why a leasehold for 99 years, which is a more permanent estate than for life, should not at least entitle the owner to a qualification in the same degree.

In the above-mentioned case of *Lowndes v. Lewis* (*b*), it was made a question whether a rector or vicar in respect of his church, had an estate of inheritance in him, or only an estate for life; and it was determined that he had only

(*a*) *Cald. Rep.* 188.—*Post*, Appen-  
dix, 1189, 1190.

(*b*) *Cald. Rep.* 188. —  
*Post*, Appen-  
dix, —

the latter, and that unless his preferment was of <sup>2d. Estate for</sup> the clear annual value of 150*l.* he was not qualified to kill game. The only statute that has ever given a positive right to any spiritual person to use these sports is that of 13 R. 2. c. 13. (c) which we have seen impliedly authorized clerical persons, advanced to 10*l.* a year, to sport. But as the Statute of Charles the Second is general in its prohibition, no person is qualified unless he can bring himself within the exceptions of that act. That act requires an estate of inheritance, in the person's own or his wife's right, of the clear value of 100*l.* per ann. It was argued in the last-mentioned case, that 100*l.* per ann. must be a qualification for a clergyman, that the estate of a parson being to him and his successors is, but in other terms, an estate in fee, that the word successors, when applied to a parson in his political capacity, is equivalent to the word heirs in his natural, and that this is as large an estate as a corporation has. But on the other side it was said, that a vicar or rector has nothing in his own right, but holds only *jure ecclesiæ*, that the inheritance is certainly in abeyance, that he has not the mere writ of right, because he has not the entire fee, but only the special remedy of *juris utrum*; that a bishop indeed has the fee in him, but that a rector or vicar has only an estate for life, and that only in the right of his church; and the court were of this latter opinion, and consequently that no ecclesiastical person, except a

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(c) Post, Appendix, 369.

2d. Estate for life. bishop who has the fee in him, is qualified to kill game, unless his preferment be of the annual value of 150*l*.

3rdly. Leases for 99 years or upwards. The third description of qualification is, "*lease or leases of 99 years of the clear yearly value of 150*l*."* We have already considered the effect of the words "*lands and tenements*" and "*clear yearly value*," and it remains for us only to inquire what is a lease within the meaning of this statute. The words of the statute seem to require an absolute and certain lease for 99 years, or upwards; but in a recent case (c) it was decided that an estate of the value of 150 *l*. per annum, holden by the defendant in his own right under a lease for 99 years, to trustees depending on the contingency of the defendant and others, so long living, is a sufficient qualification to kill game. Though it was objected that this was neither a lease for life, because the lives might survive the term, nor a lease for 99 years certain, because the lives might drop before. But Lord Kenyon said "Leases of this kind have always been deemed sufficient to give a qualification. There is no reasonable probability of any life in being extending beyond 99 years; and the legislature admitting leases of 99 years of a certain value to be a qualification to kill game, did not mean that they should positively endure so long; it is sufficient if they may extend to that period, subject, as in this case, to the contingency of the party's so long living."

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(c) *Earl Ferrers v. Henton*, Appendix, 1270.  
8 Term Rep. 506. Post,



IT appears to have been long established, that the penalties imposed by the game laws, do not attach upon one who, not being qualified, attends and assists one who is so. This was so held in the case of the *Queen v. Green (d)*, where Parker, Ch. J. said, "That such persons ought to be taken as servants to the qualified party." And in *Buxton v. Mingay (e)*, Noel, J. said, "I think a person going out with a gentleman qualified to kill game, cannot be convicted for killing game as an unqualified person." And in the *King v. Newman (f)*, this point was expressly determined; and Lord Mansfield said, "Shall not a gentleman take any body out with him to beat the bushes, and see a hare killed?" And in the more recent case of *Molton v. Rogers (g)*, where it appeared that a gentleman of the name of Slater, who was a qualified person, was out sporting with two greyhounds, and that he was joined by Rogers, the defendant, whose father was qualified, that Rogers, when he came into the field and joined him, had with him a greyhound which belonged to his father: that the dog of Rogers, and one of Slater's, found and killed a hare; that Slater had sent and borrowed the dog from the defendant's father in order to try him. It was urged that by the presence of Slater, and hunting in his company, the defendant Rogers, though unqualified, was protected; that the law put that trust in a

Unqualified  
persons sport-  
ing with qua-  
lified.

(d) Gilb. 231. Post, Appendix, 1012.

(e) 2 Wils. 70. Post, Appendix, 1128.

(f) Lofft. 178. Post, Appendix, 1162.

(g) 4 Esp. Rep. 215. post, Appendix, 1322.



Unqualified  
persons sport-  
ing with qua-  
lified.

person qualified, that he would not abuse his qualification, and therefore whilst he was following that which the law allowed, the mere joining of an unqualified person, and partaking of the sport, was no offence. And Lord Ellenborough said, "that every man was not to be considered as using a dog who merely participated in the sport; for if that were so, no man, unless he was qualified, could join in the sport of the field, nor bring a servant with him; he must be himself a principal, such as the owner of the dogs. The question, therefore, is, was this a loan of the dog to the qualified person, and was the defendant only partaking of the sport? If it was so, then, though the dog might be his, he was not liable to a penalty."

We must not, however, suppose that this permission can be used by an unqualified person, as a colourable protection for sporting on his own account; and it cannot authorize a person to *shoot* at game in company with one who is qualified; and if an inferior tradesman, or in other respects a person within the meaning of the statute 4 and 5 W. & M. c. 23. s. 10. (*h*), he will be liable to full costs upon any trespasses he may commit, and to the penalties there mentioned (*i*), and which will hereafter be fully considered.

(*h*) Post, Appendix, 464.

(*i*) Wickham v. Walker, Barnes. 125. Post, Appendix, 1061.—Buxton v. Min-  
gay, 2 Wils. 70. Post, Ap-

pendix, 1125. See the cases upon this statute, referred to in the Index, tit. Inferior Tradesmen.

## CHAPTER IV.

OF THE PENALTIES AND PUNISHMENTS TO  
WHICH UNQUALIFIED PERSONS ARE SUBJECT  
FOR SPORTING, &c.

HAVING thus considered who are qualified to kill game, and to keep dogs and engines for that purpose, and the protection the law affords to those who are merely assisting in the sport; we will now consider the penalties to which an *unqualified* person is subject for keeping or using dogs or engines for the destruction of game. We have seen that there are several ancient statutes (*a*) imposing penalties on unqualified persons for sporting, which are still in force, but they are seldom resorted to (*b*). The principal statute under which unqualified persons are now prosecuted is the 5th Ann. c. 14. s. 4. (*c*) which enacts,  
 “ That if any person or persons, not qualified by  
 “ the laws of this realm so to do, shall keep or use  
 “ any greyhounds, setting dogs, hays, lurchers,  
 “ tunnels, or any other engines, to kill and destroy  
 “ the game, and shall thereof be convicted upon

The Statute  
5 Ann. c. 14.  
s. 4.

(*a*) Ante, 36 to 39.

upon, post, Appendix, 1048.

(*b*) See an instance in which the Statute 4 and 5 W. & M. c. 23. was proceeded

(*c*) Post, Appendix, 479. made perpetual by 9 Ann. c. 25. post, Appendix, 842.

The Statute  
5 Ann. c. 14.  
s. 4.

“ the oath of one or two credible witnesses, by the  
“ justice or justices of peace where such offence is  
“ committed as aforesaid, the person or persons so  
“ convicted shall forfeit the sum of five pounds.”

The statute then directs the mode of recovering the penalty, which has since been varied in some respects, as will be hereafter considered. We will now examine each part of this enactment :

Constructions  
on 5 Ann.  
c. 14. s. 4.

[“ *If any person or persons—*”] Where several unqualified persons go out together and kill a hare, only one penalty can be recovered, for which they are jointly or severally liable as the prosecutor may think fit to proceed (*d*). For the statute itself has considered several as capable of being joint offenders; for it says, “ If any person or persons shall keep or use any greyhound, &c. the person or persons so convicted shall forfeit five pounds;” so that it gives one penalty of 5*l.* to be paid by *the person or persons* who act against the statute. It has therefore made it a joint offence in all persons concerned, and has made all of them subject but to one forfeiture, and they are consequently within the rule of the common law punishable jointly (*e*). In Barnard

(*d*) The King v. Bleasdale and others, 4 Term Rep. 809. Post, Appendix, 1233. and pr. Lord Kenyon in Peshall v. Layton, 2 Term Rep. 712. Hardyman v. Whitacre, 2 East. 573. post, Appendix, 1313.

(*e*) By the Court in Hardyman v. Whitacre and others,

2 East. 573. and Bull. Ni. Pri. 189. Post, Appendix, 1313. As to when offences must be considered joint, and when several, see 1 New. Rep. 245. and see post, Appendix, 969. 1014. Rex v. Clarke and others, Cowp. 612. and Term Rep. on the Toleration Act.

v. Gosling (*f*) the Court said, "That though several persons join in using a greyhound, or killing a hare, still there is but one act done by all;" and in *Rex. v. Clark* (*g*), Lord Mansfield said, "Killing a hare is but one offence in its nature, whether one or twenty kill it, it cannot be killed more than once. If partridges are netted by night, two, three, or more may draw the net, but still it constitutes but one offence." But these decisions only apply where two or more concur in *one* act; and if several persons shoot together, each having a gun, they will all be liable to a separate penalty.

Constructions  
on 5 Ann.  
c. 14. s. 4.

[*"Not qualified by the laws of this realm so to do"*—] We have already considered who are qualified to keep or use dogs or engines to kill game. These qualifications, as we have seen, are founded upon the 22 & 23 C. 2. c. 25. and the 5 Ann. c. 14. s. 4. and 9 Ann. c. 25. & 48 Geo. 3. c. 93. under which the owner and keeper of a forest, park, chase, or free warren, and the lord of a manor and his gamekeeper within the manor, and the eldest son of an esquire, or of a person of higher degree, and a person having, in his own or his wife's right, an estate of inheritance of the clear yearly value of 100*l.*, or an estate for life, or for 99 years, of the clear yearly value of 150*l.* are the only persons qualified to keep or use dogs or engines for the purpose of killing game (*h*). All other persons are to be deemed unqualified

(*f*) 1 New. Rep. 251. 646.

(*g*) Cowp. 612. See also (*h*) Ante, 39 to 74.  
*Crepps v. Durden*, Cowper.



Constructions  
on 5 Ann.  
c. 14. s. 4.

within the meaning of the 4th section of the statute of 5 Anne, c. 14. And we have seen that even a lord of a manor, qualified only in that character, as well as his gamekeeper, is liable to the penalties of this statute, if he sports out of his manor (*h*).

It has been held that a huntsman going out with his master's hounds, though the master himself was not with him, is not a dissolute person within the Stat. 4 and 5 W. & M. c. 23. (*i*) so as to subject him to full costs in an action of trespass (*k*), nor would he be liable under this statute to the penalty for hunting as an unqualified person not assisting one who is so (*l*), because a hound is not within that statute, and if authorized by his master to go out, he must be considered as acquiring the possession of (*m*) any hare he may kill, for his master, and so as to protect him from the penalties of 9 Ann. c. 25. s. 2. (*n*).

[“*Shall keep or use*”--] It is observable that this statute does not inflict any penalty upon unqualified persons generally *for killing or destroying* the game, but rather makes the means by which that is effected the offence, and a conviction or declaration merely for killing game, would

(*h*) Ante, 43.

vide ante, 73, 4.

(*i*) Post, Appendix, 464.

(*m*) Hooker v. Wilks, 2

(*k*) Pallant v. Roll, 2 Bla. Rep. 900. post, Appendix, 1164.

Strange. 1126. post, Appendix, 1079.

(*l*) When an unqualified person is protected by the presence of one qualified,

(*n*) Post, Appendix, 483.—Warrenford v. Kendall, 10 East. 19. post, Appendix, 1344.

be insufficient (*o*). The 9 Ann. c. 25. s. 2. (*p*), however, makes it an offence for any person to have possession of game who is not either himself qualified, or entitled to it under a person who is so. In the Act of 5 Ann., as observed by Lord Mansfield (*q*), there are two offences described, a *keeping* and an *using*, and the legislature meant that there may be a keeping to destroy, &c. which is not of necessity to be *proved* by an *using* for that purpose. If it were so, it would be tautologous, for such evidence would be a proving of the other offence. The keeping therefore of a thing expressly prohibited by the act being an offence against it, it is necessarily *prima facie* evidence of a keeping for the purpose prohibited, and in case of a prosecution it is incumbent upon the *defendant* to shew that it was kept for another purpose, as in the instance of a greyhound, that it is a house dog, a favourite dog, or a particular species of greyhound. And Chapple, J. in the King v. Gardner (*r*), said, "that the reason of the words of the act being in the disjunctive, 'keeping *or* using,' &c. is because people use other folks' dogs, and if they do they are within the act. And the keeping of them must be averred to be on purpose only to destroy the game." It is observable that the Statute 22 and 23 C. 2. c. 25. s. 3. (*s*),

Constructions  
on 5 Ann.  
c. 14. s. 4.

(*o*) The Queen v. Matthews, 10 Mod. 26. post, Rep. 175. post, Appendix, 1182.  
Appendix, 1010.  
(*p*) Post, Appendix, 483.  
(*q*) Rex v. Hartley, Cald.

(*r*) 7 Mod. 279. post, Appendix, 1074.  
(*s*) Post, Appendix, 447.

Constructions  
on 5 Ann.  
c. 14, s. 4.

prohibits unqualified persons from having or keeping for themselves, *or for any other person or persons*, any of the dogs or engines therein mentioned; but this section of the statute is merely prohibitory, and imposes no penalty; and the prior Statutes of 13 R. 2. c. 13. (*t*) and 2 J. 1. (*u*) c. 27. s. 3. do not describe the keeping of dogs or engines for other persons as an offence. It seems, therefore, that with respect to greyhounds, setting dogs, hays, lurchers and tunnels, which are particularly enumerated in the statute, any unqualified person keeping them is *prima facie* guilty of an offence under the Statute of Ann. without its being incumbent on the *prosecutor* to adduce any evidence of the motive or intention for which they are kept; but it is competent to the defendant to rebut this presumption, by shewing that they were kept for an innocent purpose (*x*).

With respect to what is evidence of *using*, in the case of *Rex v. King* (*y*), Parker, Ch. J. said, "That walking about with a gun with intent to kill game, will be evidence of using it for

(*t*) Post, Appendix, 369.

(*u*) Post, Appendix, 422.

(*x*) *Rex v. Hartley*, Cald. Rep. 175. post, Appendix, 1178 to 1183. and *Rex v. Gardiner*, Andrews, 255.—2 Strange, 1098.—7 Mod. 279. S. C. post, Appendix, 1068 to 1074. In the *King v. Filer*, 1 Strange, 495. post, Appendix, 1041. the objection to the conviction was,

that the defendant might have kept the dog for a qualified person, but the Court held that it was enough to shew in the conviction that the defendant did keep the dog, and took no notice of this exception, but did not say that if this fact had been proved, it would not have been a sufficient defence.

(*y*) 1 Sess. Ca. 88.



that purpose. And in the case of the King v. Davis (z), where the evidence stated in the conviction was, that the witness had his reason for believing that the defendant used a gun to kill and destroy the game, because the gun was fired by the defendant, who was walking about a piece of ground with that apparent intent, the Court held the conviction sufficient.

Though we have seen (a) that a person, not qualified, assisting one who is so, is not in general liable to a penalty, yet it should seem that if he kept a dog, and took it out with him, though in company of a qualified person, it would afford evidence of a keeping with intent to kill game.

[“*Any greyhounds, setting dogs, hayes, lurchers, tunnels, or any other engines*”—] These words are less comprehensive than those used in the prior acts. The Statute 13 Rich. 2. c. 13. (b), says, “greyhound, hound, *nor other dog*, to hunt, and fyrets, heys, nets, hare pipes, nor cords, nor other engines.” The Stat. 2 J. 1. c. 27. s. 13. (c), mentions *dogs* generally; the 3 J. 1. c. 13. s. 5. (d), names “guns, bows, crossbows, buckstalls, or engine hayes, gate nets, purse nets, ferrets, or coney dogs.” The Statute 22 and 23 C. 2. c. 25. s. 1 and 2. mentions “guns, bows,

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(z) 6 Term Rep. 177. post, of what was the intention of the party.  
 Appendix, 1248. The case of Beckwith v. Shordike and another, 4 Burr. 2092. post, Appendix, 1143. also affords a rule as to the construction

(a) Ante, 73.

(b) Post, Appendix, 369.

(c) Post, Appendix, 423.

(d) Post, Appendix, 430.



greyhounds, setting dogs, lurchers, *or other dogs*, to kill hares or conies, ferrets, tramels, lowbels, hays, or other nets, hare pipes, snares, or other engines." The third section of this statute is less comprehensive, and it is probable that from this clause the 4th section of the 5 Ann. c. 14. (c), was framed. The words are, "guns, bows, greyhounds, setting dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, hare pipes, gins, snares, or other engines aforesaid."

This being a penal statute no action lies upon it for keeping or using any dog which does not fall within the description mentioned in the statute; for the words *other dogs*, mentioned in the former statutes, are not in this clause; and the term *other engines* is held only to extend to inanimate instruments. On this ground it was decided (f), that a declaration upon this statute, stating that the defendant did keep and use *a dog* to destroy the game, was bad, even after verdict, because it ought to have expressed what sort of dog, for it might be a mastiff or a lap dog, which might chance to kill game, and the statute only mentions "greyhounds, setting dogs, and lurchers;" and this being a penal law shall not be extended by equity. And in a subsequent case (g), judgment was arrested on a declaration for using a *hound* to destroy game, because the statute has not the word *hound*, and

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(e) Post, Appendix, 478.

(g) Hooker v. Wilks, 2

(f) Reason v. Lisle, 2 Strange. 1126. post, Appendix, 576. post, Appendix, 1079.

dix, 1059.

the words other engines come after nets, &c. and are applicable only to inanimate things. Under the term setting dogs, all dogs of that nature, pointers as well as setters, are included.

Under the words "*other engines*," every description of instruments may be included. A distinction is taken between those that are expressly enumerated in the statute and those which are included under this general expression. It is considered *primâ facie* as illegal to keep the former, but with respect to the latter, which may or may not be kept for an unlawful purpose, the prosecutor must adduce some evidence to shew either that they were used unlawfully, or that they were kept for that purpose (*h*). We find that guns which were expressly mentioned in the former acts were purposely (*i*) omitted in this, because it might be attended with great inconvenience to render the possession of a gun *primâ facie* evidence of its being kept for an unlawful purpose, and being thus omitted, it is established by several decisions that, in order to subject a person to a penalty for keeping a gun,

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(*h*) The King v. Filer, Appendix, 1103.  
 1 Strange, 495. post, Appendix, 1041. Rex v. Gardner, Andrews. 255. — 2 Strange, 1098.—7 Mod. 279. post, Appendix, 1068 to 1074. Rex v. Hartley, Cald. Rep. 175. post, Appendix, 1178. The King v. Thomson, 2 Term Rep. 18. post, Appendix, 1221.—Mallock v. Eastley, 7 Mod. 482. post,

(*i*) See the King v. Gardner, Andrews. 255. post, Appendix, 1071. where it was said by the Solicitor General, that Lord Macclesfield said he was in the House of Commons when this act was made, and himself objected to the insertion of the word gun.

the purpose for which he kept it must be proved by the prosecutor (*k*).

[“ *To kill and destroy*”—] The offence is not complete, unless it appear that the prohibited dogs, or engines, were kept or used to kill and destroy game. It must be alleged in an information, conviction, or declaration, that they were kept or used for such unlawful purpose (*l*). And though we have seen that the bare keeping of any one of the dogs or engines particularly enumerated in the act, is *primâ facie* unlawful (*m*), yet it is competent to the defendant to prove that they were kept by him for another purpose (*n*). In the case of the *King v. Gardner* (*o*), Chapple, J., said, “ If such things as are enumerated in the statute, and are peculiarly fitted or disposed for killing game, as hare pipes, lurchers, &c. are kept by an unqualified person, yet it must be averred that they are kept to kill game; and in that case it would be incumbent on the person having such things in his custody, to prove that he kept them for other purposes; and supposing this to be the fact, and that he never used them in killing game, he would not be punishable. And Page, J. said he remembered a case in Lord Holt’s time, where it was held that the keeping a lurcher, without using it in killing game, was not within the Statute of

(*k*) See the cases, ante, 83. Appendix, 1041. 1071. 1183.  
n. h.

(*n*) Post, Appendix, 1071.

(*l*) See Burn’s Justice, 1183.  
tit. Game, Forms, I.

(*o*) Post, Appendix, 1070.

(*m*) See ante, 83. post,

Charles the Second, though it be expressly named therein; and we may remember that Lord Mansfield expressed the same opinion (*p*).

[“*The game*”—] We have seen that the term game, in its most extensive signification, includes every wild animal, the pursuit of which can afford sport to its pursuer (*q*). It has, however, under this act, a more qualified meaning. It includes that description of game mentioned in the other provisions of the same act, such as hares, pheasants, partridges, moor, heath game or grouse, but it does not include woodcocks or rabbits (*r*), which, together with snipes, quails, and landrails, are treated under a different denomination by a late statute (*s*).

[“*Shall forfeit the sum of 5*l*.*”—] We have seen, that if several are jointly guilty of the same offence, they are liable under this statute to only one penalty (*t*). It is also established, that if an unqualified person kill several hares, pheasants, partridges, &c. (*u*), or use a dog, and also a gun (*x*), upon the same day, he is only liable to one penalty under *this* statute. And this accords with the decisions on other legislative

(*p*) Ante, 79.

(*q*) Ante, 1, 2.

(*r*) Per Ashhurst, J. in the *King v. Thomson*, 2 Term Rep. 18. post, Appendix, 1225. *Rex v. Yaites*, 1 Ld. Raymond, 151. post, Appendix, 981.

(*s*) 48 Geo. 3. c. 55. post, Appendix, 679.

(*t*) Ante, 76.

(*u*) *The Queen v. Matthews*, 10 Mod. 26. post, Appendix, 1010. — *Marriot v. Shaw*, Comyns, 274. post, Appendix, 1034. — *Crepps v. Durden*, Cowp. 646.

(*x*) *The King v. Lovett*, 7 Term Rep. 152. post, Appendix, 1254. *The King v. Blaney*, Andrews, 240. post, Appendix, 1074.



provisions of a similar nature (*y*). The offence is the keeping or using dogs or engines for the destruction of game, and makes no distinction as to the extent of the destruction on any one day (*z*). Thus, in the *Queen v. Matthews* (*a*), the Court said, “ That the offence for which the statute gave the forfeiture, was the keeping of dogs and engines, not killing the hares, and that if a man, not qualified, go a hunting, and kill never so many hares upon the same day, he will forfeit but one 5*l.*, for it is but one offence; but that if a man keep dogs, and go a hunting several days, and kill hares, if it had been thus laid, that he on such a day kept dogs and killed, &c. and then again on such a day, by laying it thus severally the offence is severed, and he shall forfeit 5*l.* for each offence.” In a subsequent case (*b*), Lord Kenyon said, “ If a person go in pursuit of game, with a dog and gun, on the same day, he can only be convicted in one penalty. From a *Nisi Prius* report (*c*) it might be supposed to have been decided that only one penalty would be incurred under the same act of parliament, but this has been considered as a mistake, and that, if two distinct offences be committed against the same act, the defendant will be liable to several

(*y*) *Crepps v. Durden*, 7 Term Rep. 152. post, Appendix, 1255.

(*z*) *Id. ibid.*

(*a*) 10 Mod. 26. post, Appendix, 1010. See also *Marriot v. Shaw*, Comyns. 274. post, Appendix, 1031.

(*b*) *The King v. Lovett*,

(*c*) *Molton v. Cheesely*, 1 Esp. Rep. 123. post, Appendix, 1247.; but see this case observed upon in 10 East. 19. post, Appendix, 1346.

penalties. As this defect in the statute, making no distinction as to the quantity of game destroyed, tended to encourage offenders in their violation of the law, a provision was introduced by the Statute 9 Ann. c. 25. (*d*) subjecting to a separate penalty of 5*l.* for every head of game a person may have in his possession (*e*); and thus the provisions of the legislature are become complete.

The Statute 5 Ann. points out the *mode of recovery*, and the penalty thus incurred, which must be proceeded for by information, and conviction within three months (*f*), or by action within six months (*g*); but this will more properly form the subject of inquiry in a subsequent chapter, upon the mode of recovering penalties in general. The statutes having pointed out a particular penalty, no indictment is sustainable either for killing a hare (*h*) or for having nets, or guns, in possession to kill game (*i*), or for a conspiracy to enter a preserve for hares, for the purpose of snaring them, though alleged to be done by the defendants in the night, armed with offensive weapons, for the purpose of opposing resistance to any endeavours to obstruct them (*k*). If an

(*d*) Post, Appendix, 483. post, Appendix, 605. and  
The particular provisions of Lee v. Clark, 2 East. 333.  
this statute are considered in post, Appendix, 1305.  
a subsequent chapter.

(*e*) Bluet v. Needs, 2 679. post, Appendix, 1047.  
Comyns Rep. 522. post, Ap- (*h*) Rex v. Buck, 2 Strange,  
pendix, 1058.

(*f*) 5 Ann. c. 14. s. 2. The (*i*) Rex v. Towning, and  
King v. Tolley, 3 East. Rep. others, Andrews, 303. post,  
167. post, Appendix, 1317. Appendix, 1077.

(*g*) 12 Geo. 3. c. 19. s. 5. (*k*) The King v. Turner,  
13 East. 228. post, Appen-  
dix, 1372.

unqualified person should, in sporting, by accident shoot another, it is no greater offence in him than in a qualified person (*l*).

Penalty on officers or soldiers killing game.

Besides the general provision of the Statute 5 Ann. c. 14. which subjects all unqualified persons to a penalty for keeping or using dogs, or engines, for the destruction of game, there is a regulation in the annual mutiny act, intended, as the act professes, for the better preservation of game in or near the place where any officers or soldiers may be quartered. The statutes (*m*) make no distinction whether the officer or soldier be qualified or not, but enact "That if any officer or soldier shall, without leave of the lord of the manor, under his hand and seal first had and obtained, take, kill, or destroy, any hare, coney, pheasant, partridge, pigeon, or any other sort of fowls, poultry, or fish, or game, every such officer shall forfeit 5*l*. for each offence, and the officer commanding in chief upon the place shall, for every such offence committed by a soldier under his command, forfeit 20*s*. recoverable and distributable as there directed."

Penalties on inferior tradesmen, apprentices, &c.

The Statute 4 and 5 W. & M. c. 23. s. 10. introduces another provision, tending to prevent persons in inferior stations from destroying game. It recites, "That great mischiefs do en-

(*l*) Foster, 259.—1 Hale's Pl. Cr. 475.—1 East. Pl. Cr. 260. 269. act, the clause is generally the same as in 47 Geo. 3. c. 32. s. 69. post, Appendix,

(*m*) The annual mutiny 675.

“sue by inferior tradesmen, apprentices, and  
 “other dissolute persons, neglecting their trades  
 “and employments, who follow hunting, fish-  
 “ing, and other game, to the ruin of them-  
 “selves, and damage of their neighbours;”  
 and it then enacts, “That if any such persons as  
 “aforesaid shall presume to hunt(*n*), hawk, fish,  
 “or fowl, (unless in company with the master of  
 “such apprentice duly qualified by law,) such  
 “person or persons shall be subject to the penal-  
 “ties of this act, and shall or may be sued or  
 “prosecuted for their wilful trespass in such  
 “their coming on any person’s land, and if found  
 “guilty thereof, the plaintiff shall not only re-  
 “cover his damages thereby sustained, but his  
 “full costs of suit, any former law to the con-  
 “trary notwithstanding.”

Penalties on  
 inferior  
 tradesmen,  
 apprentices,  
 &c.

This Statute, it is observable, not only subjects  
 the party to full costs of suit, however small the  
 damages, and so far as relates to trespasses com-  
 mitted by such persons, repeals the Statute of the  
 22 and 23 C. 2. c. 9. which deprives the plain-  
 tiff of full costs unless he recover 40*s.* damages (*o*),  
 but also directs that he shall be subject to the  
 other penalties of the act. The latter are seldom  
 proceeded for, but the former provision is fre-  
 quently enforced. In the leading case(*p*) upon

(*n*) It is not necessary to  
 prove that the defendant kill-  
 ed game, it will be sufficient  
 to prove that he hunted, Sha-  
 dow v. Painter, Carth. 424.  
 Post, Appendix, 983.

(*o*) Bennet v. Talbois, 1  
 Lord Raym. 149. post, Ap-  
 pendix, 982.

(*p*) Buxton v. Mingay, 2  
 Wils. 70. post, Appendix,  
 1125.



Penalties on  
inferior  
tradesmen,  
apprentices,  
&c.

this subject, where a surgeon and apothecary, who was not qualified, hunted in company with a person who was duly qualified, and an action of trespass was brought against the former, the Court was equally divided in opinion on the question, whether he was an inferior tradesman or not within the meaning of this statute. Noel, J. said, “ I think it would be hard for me to say that every tradesman in this kingdom, (though never so rich in money,) who hath not a qualification in lands, shall pay full costs in a case like this ; nor can I prevail upon myself to say that the defendant, because he is merely stated to be an apothecary, is therefore an inferior tradesman, or a dissolute person. It was argued for the plaintiff, that amongst tradesmen, as such, there can be no line drawn with respect to who are superior and who are inferior, but that they are all upon an equal footing as tradesmen ; and that therefore the legislature, by the words ‘ *inferior tradesmen*,’ meant such as were not qualified ; but I think if this construction was to prevail, it would bring every gentleman, as well as rich tradesman, who have not a qualification, within the meaning of this clause. It was argued for the defendant, that a qualification was not necessary to authorize a person to go a hunting. I shall say nothing to that point ; but I do think a person going out with a gentleman qualified to kill game, cannot be convicted for killing game as an unqualified person. It is said, that if the qualification be not the true distinction no

line can be drawn between superior and inferior; but I answer there is a known distinction universally agreed to between tradesmen with respect to superior and inferior, as master, journeyman, and apprentice; and this is a natural subordination which answers the act of parliament in every respect, for journeymen and apprentices are plainly inferior, and within the mischief intended to be remedied. I agree that the statute says, 'unless in company with a master qualified,' and that every apprentice being out a hunting, not in company with a master qualified, is within the statute. I think the jury at the trial ought to determine under the particular circumstances of every case of this kind, whether the defendant be or be not an inferior tradesman or dissolute person, and it is too much for me to say that this defendant, who is an apothecary and surgeon, is an inferior tradesman or a dissolute person. If judgment in this case should be for the plaintiff to have his full costs, it would lay a foundation for an infinite number of suits."

Bu Bathurst, J. who was of a different opinion, said, "That this was a question of law, and not of fact, and that the judges and not the jury are to determine who are inferior tradesmen or dissolute persons within this law. In order to find out the true construction of this statute, we must take the intent of the makers into consideration, which was plainly to secure the game from being destroyed by persons neglecting their lawful em-

Penalties on  
inferior  
tradesmen,  
apprentices,  
&c.

Penalties on  
inferior  
tradesmen,  
apprentices,  
&c.

ployments, as appears by the preamble. There may be an inferior and superior between master, journeyman, and apprentice, but I can never be of opinion that the legislature intended to permit every master of every little mechanic trade to neglect his trade and go a hunting; the clause under consideration (it must be admitted) is a little obscure; but I am of opinion that every tradesman is inferior who is not qualified; and that is the only line we can possibly draw between inferior and superior. And I am inclined to think the parliament purposely penned this act in this obscure manner not to disoblige their constituents, many of whom are tradesmen. In *Bennet v. Talbois*, Comyns. 26. it was objected that a clothier was not an inferior tradesman, sed non allocatur, (says the book,) for the statute seems to prohibit all trades. Upon the whole I am of opinion, that all qualified tradesmen are not inferior tradesmen, that all unqualified tradesmen are inferior." And Clive, Justice, delivered his opinion to the same effect. But Willes, Ch. J. said, "The single question is, who is the tradesman that shall pay full costs in a twelve-penny trespass, in hunting in company with a gentleman qualified. I do not think it necessary to draw any line at all in this case, but it ought to be considered on its own circumstances; and I am clear of opinion that the legislature could never have intended that a surgeon is an inferior tradesman within this clause. I think the case consists both of matter of law, and of matter of

fact; and if I had been to try this cause I should have told the Jury my opinion, upon hearing the evidence and the circumstances of the defendant, and have asked them, whether upon their oaths they could say that this defendant was an inferior tradesman, a dissolute person, or neglected his trade; and in this manner I should have spoken to them, and then left them to say what was their verdict upon the whole evidence and circumstances of the person and the case of the defendant. For my own part, I cannot upon oath say, that this defendant, merely as an apothecary and surgeon, is an inferior tradesman or a dissolute person, and agree entirely with my brother Noel, that the plaintiff ought to have no more costs than damages."

Penalties on  
inferior  
tradesmen,  
apprentices,  
&c.

From the prior case of the *Queen v. George* (*d*) it appears that a qualified person cannot be considered as a dissolute person within the meaning of this Act. And the Court in that case quashed the conviction, for not averring that the defendant was qualified, saying, "There are many dissolute persons worth 2000*l.* per ann. and who are by consequence qualified to hunt, &c." And in another case (*e*), where the information only recited that the defendant was an inferior tradesman, but did not shew that he had wasted his substance, or was a dissolute person, which are the words of the statute, and it was objected to on

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(*d*) 6 Mod. 40. post, Appendix, 1003. Strange. 711. post, Appendix, 1048.

(*e*) *The King v. Chipp*, 2



Penalties on  
inferior  
tradesmen,  
apprentices,  
&c.

that account, the Court overruled the objection, observing that the statute was in the disjunctive, viz. "Inferior tradesman *or* dissolute person," and therefore saying that the defendant was either was sufficient. Another point was decided in this case, and in that of *Shadow v. Painter* (f), that it is not necessary to allege or prove that the defendant killed any game, or that he hunted unlawfully, hunting alone being sufficient, and there being no distinction in this act betwixt lawful and unlawful hunting. In a subsequent case (g), where a clothier and -alehouse-keeper hunted in company with a person qualified, who killed a hare, and was sued in trespass on this statute, the Court was of opinion that the defendant being found by the jury to be an inferior tradesman is within the statute, which was made to prevent such people from misspending their time, and that the defendant's trade was as much neglected when he hunted with a qualified person as without; and Lord Holt said, "Every tradesman not qualified is an inferior tradesman." In the last case (h) upon this subject it was held that a huntsman who went out by his master's orders with the hounds, his master not being present, and beat over the plaintiff's grounds, was not a dissolute person neglecting his trade and employment within the meaning of this

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(f) *Carthew*, 424. post, 1061.  
Appendix, 983.

(h) *Pallant v. Roll*, 2 Bla.

(g) *Wickham v. Walter*, Rep. 900. post, Appendix,  
*Barnes*, 125. post, Appendix, 1164.

statute. Upon the whole it appears that a qualified person cannot be deemed an inferior tradesman or dissolute person within the meaning of this act, though it does not seem to be perfectly settled that every tradesman, who is not qualified, is subject to the penalties of the act.

Penalties on  
inferior  
tradesmen,  
apprentices,  
&c.

## CHAPTER V.

THE TIME WHEN GAME MAY BE TAKEN—MODE OF TAKING IT—OFFENCE OF BUYING AND SELLING IT, AND HAVING IT IN POSSESSION—AND OF TAKING OF EGGS OF GAME AND WILD FOWL—AND BURNING HEATH, &c.

IT will be proper in this chapter to consider the regulations of a general nature which relate to the *time* when game may be taken, the *mode* of taking it, the offence of *buying and selling* it, of an unqualified person *having it in possession*, and also the regulations which tend to preserve it, by prohibiting the *taking of eggs* and *burning of heath*, &c.

1. THE TIME  
WHEN GAME  
MAY BE  
TAKEN.

The time when game may be taken may be considered under three heads: 1st. *The season of the year*. 2d. *Certain excepted days*. 3d. *Time of day*.

1. Season of  
the year.

1st. With respect to the *season of the year*, there does not appear to be any regulation limiting the time when *hares* may be killed, and consequently a qualified person may kill or have them in his possession at any time of the year. All persons are, however, prohibited from tracing or coursing and killing any hare in the snow;

for it was enacted by the 14 & 15 Hen. 8. 1. THE TIME WHEN GAME MAY BE TAKEN.  
 c. 10. (a) "That no person shall trace, destroy, and kill any hare in the snow under pain of 6s. 8d. for each hare." And by the 2 J. 1. c. 27. s. 2. (b) which virtually repeals the former, it is enacted, "That every person who shall trace or course any hares in the snow shall be imprisoned three months, unless he pay 20s. for every hare he shall have taken or killed." Neither is there any provision as to the time of the year when *rabbits* are to be taken. But with respect to *pheasants, partridges, black game, or heath fowl, red game or grouse, bustards and all wild fowl*, there are express provisions prohibiting the taking of them at certain seasons of the year. Thus with respect to *pheasants*, it is enacted by the 2 G. 3. c. 19. s. 1. (c) "That no person shall, upon any pretence whatever, take, kill, destroy, carry, sell, buy, or have in his possession, any pheasant between the 1st of February and 1st of October in any year, except pheasants taken in the season allowed by the act, and kept in any mew or breeding place; and subjects the offender to a penalty of 5*l.* for every pheasant, recoverable by action to the use of the informer.

The taking, killing, destroying, carrying, selling, buying, or having in possession any *partridge* between the 1st of February and the 1st of September, subjects the offender to a similar penalty, recoverable in the same manner, and

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(a) Post, Appendix, 382.

(b) Post, Appendix, 421.

(c) Post, Appendix, 603.



1. THE TIME  
WHEN GAME  
MAY BE  
TAKEN.

subject to the same regulations as that for taking pheasants.

The 13 G. 3. c. 55. s. 1. (*d*) enacts, "That no  
" person shall upon any pretence whatever wil-  
" fully take, kill, destroy, carry, sell, buy, or  
" have in his possession or use, any heath fowl,  
" commonly called *black game*, between the 10th  
" of December and the 20th of August; nor  
" any *grouse*, commonly called *red game*, be-  
" tween the 10th of December and the 12th  
" of August, nor any *bustard* between the 1st  
" of March and the 1st of September, on pain  
" of forfeiting for the first offence any sum not  
" exceeding 20*l.* nor less than 10*l.*, and for the  
" second, and every subsequent offence, any sum  
" not exceeding 30*l.* nor less than 20*l.*, recover-  
" able as therein mentioned." There is a par-  
ticular provision (*e*) for the preservation of heath  
fowl or black game in the *New Forest*, which pro-  
hibits the taking such game there between the  
10th of December and the 1st of September  
under the same penalties. And there is the same  
provision (*f*) as the last with regard to heath  
fowl or black game within the counties of *Somer-*  
*set* and *Devon*.

With respect to *wild fowl*, it was enacted by  
10 Geo. 2. c. 32. s. 10. (*g*), "That if any per-  
" son shall in any year between the 1st of June  
" and the 1st of October, by hayes, tunnels,

(*d*) Post, Appendix, 627.

(*f*) 50 Geo. 3. c. 67. post,

(*e*) 43 Geo. 3. c. 112.—  
Post, Appendix, 672.

Appendix.

(*g*) Post, Appendix, 531.

“ or other nets, drive and take any wild duck, 1. THE TIME  
 “ teal, widgeon, or any other water fowl, in any WHEN GAME  
 “ marshes, fens, or other places of resort for wild MAY BE  
 “ fowl, he shall be liable to the penalties of the TAKEN.  
 “ 9 Ann. c. 25. s. 4.” (*h*) which is 5*s.* for every  
 such water fowl taken, half to the informer and  
 half to the poor of the parish; and the justice  
 of the peace, before whom the offender shall be  
 convicted, is authorized to seize and destroy the  
 nets, &c.

Besides these provisions, which relate to the 2dly. Parti-  
 season of the year when game and wild fowl may cular days.  
 be taken, there are *particular days* when every  
 person is prohibited from killing game or using  
 dogs or engines for that purpose. The 13 Geo. 3.  
 c. 80. s. 6. (*i*) enacts, “ That if any person shall  
 “ upon *Sunday* or *Christmas-day* wilfully take,  
 “ kill, or destroy any hare, pheasant, partridge,  
 “ heath game, or moor game, or shall use any  
 “ gun, dog, net, or engine for that purpose, he  
 “ shall forfeit for the 1st offence not more than  
 “ 20*l.* or less than 10*l.*, for the second not more  
 “ than 30*l.* nor less than 20*l.*, and for the third  
 “ and subsequent offences 50*l.*”

There are also provisions to prevent the kill- 3dly. Night  
 ing game in the *night*. Thus it was enacted time-  
 by the 13 Geo. 3. c. 80. s. 1. (*k*) “ That  
 if any person shall wilfully kill, take, or destroy

(*h*) Post, Appendix, 484. other, 7 East. 533. post, Ap-

(*i*) Post, Appendix, 638. pendix, 1334.

See a decision upon this Sta-  
 tute, *Still v. Walls* and an-

(*k*) Post, Appendix, 634.

1. THE TIME  
WHEN GAME  
MAY BE  
TAKEN.

“ any hare, pheasant, partridge, moor-game,  
 “ or heath-game, or use any gun, dog, snare,  
 “ net, or other engine for that purpose in  
 “ the night, that is to say, between the hours of  
 “ seven o’clock in the night and six in the  
 “ morning, from the 12th day of October to the  
 “ 12th day of February; and between the hours  
 “ of nine at night and four in the morning, from  
 “ the 12th day of February to the 12th day of  
 “ October, he shall forfeit for the first offence  
 “ any sum not exceeding 20*l.* nor less than 10*l.*,  
 “ for the second not more than 30*l.* nor less than  
 “ 20*l.*, for the third and subsequent offences  
 “ 50*l.*”

And by the 39 and 40 Geo. 3. c. 50. (1) it is enacted, “ That if any persons to the *number of*  
 “ *two or more*, shall enter into, or be found in any  
 “ forest, chase, park, wood, plantation, paddock,  
 “ field, meadow, or other open or inclosed ground,  
 “ in the night, that is to say, between the hours  
 “ of eight o’clock at night and six in the morn-  
 “ ing, from the 1st day of October to the 1st day  
 “ of February, or between the hours of ten at  
 “ night and four in the morning, from the 1st  
 “ day of February to the 1st day of October in  
 “ each and every year, having any gun, net,  
 “ engine, or other instrument, for the purpose  
 “ and with the intent to destroy, take, or kill, or  
 “ shall wilfully destroy, take, or kill any hare,  
 “ pheasant, partridge, heath fowl, or grouse, or

“ if any person shall be found with any gun, fire  
 “ arms, bludgeon, or with any offensive weapons  
 “ protecting or assisting, such persons may be  
 “ seized and prosecuted as rogues and vaga-  
 “ bonds.”

1. THE TIME  
 WHEN GAME  
 MAY BE  
 TAKEN.

With respect to *rabbits*, they appear to have been treated as more valuable property than other game by a modern act of parliament. The 9 Geo. 1. c. 22. (*m*) made it felony, without benefit of clergy, for any *disguised and armed* person in the night time to enter any warren or place where rabbits or hares are usually kept; but this statute is considered virtually repealed by 5 Geo. 3. c. 14. s. 6. (*n*). The 22 and 23 C. 2. c. 25. s. 5. (*o*) enacts, “ That no person shall kill  
 “ or take in the night-time any rabbits upon the  
 “ borders of any warrens or other grounds law-  
 “ fully used for the breeding or keeping of rab-  
 “ bits, unless he be the owner of the soil, or law-  
 “ ful occupier, or some person employed by him,  
 “ upon pain of forfeiting any sum of money not  
 “ exceeding 10*s*.” By the 5 Geo. 3. c. 14. s. 6. (*p*) it is enacted, “ That if any person shall in the  
 “ night-time wilfully enter into any warren or  
 “ grounds lawfully used or kept for the breeding  
 “ or keeping of conies, although it be not in-  
 “ closed, and shall there wilfully take or kill any  
 “ coney or conies against the will of the owner  
 “ or occupier thereof, or shall be aiding therein,  
 “ shall be transported for seven years, or suffer

(*m*) Post, Appendix, 515.

(*n*) Post, Appendix, 614.

(*o*) Post, Appendix, 448.

(*p*) Post, Appendix, 614.



1. THE TIME  
WHEN GAME  
MAY BE  
TAKEN.

“ some less punishment by fine, whipping, or  
“ imprisonment, in the discretion of the court  
“ who shall try such person, with an exception  
“ as to the killing rabbits near the sea or river  
“ banks in the county of Lincoln.”

## II. MODE OF KILLING GAME.

2. MODE OF  
KILLING  
GAME.

Besides the prohibition against *unqualified* persons, from keeping or using any dogs or engines for the destruction of game, there are some means of taking game which are forbidden to *all* persons. Thus by the 2 J. 1. c. 27. s. 2. (q) “ All  
“ persons are prohibited from shooting at, killing  
“ or destroying with any gun, cross bow, stone  
“ bow, or long bow, any pheasant, partridge,  
“ house dove, or pidgeon, hearn, mullard, duck,  
“ teal, widgeon, grouse, heath cock, moor game,  
“ or any such fowl, or *any hare*, or to take, kill,  
“ or destroy any pheasant, partridge, house  
“ dove, or pidgeon, with setting dogs and nets,  
“ or with any manner of nets, snares, engines,  
“ or instruments whatsoever, upon pain of for-  
“ feiting twenty shillings.” It was argued in the King v. Harris (*r*), that the Statute 2 Jac. 1. c. 27. was virtually repealed by the Statute 22 and 23 Car. 2. c. 25. but the Court gave no decision upon this suit. This act was recently

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(q) Post, Appendix, 421.      Post, Appendix, 1257.  
(r) 7 Term Rep. 238.—

recognized as being in force with respect to *hares*, 2. MODE OF KILLING GAME. by the 48 Geo. 3. c. 93. (t) which expressly repeals it, and enacts that it shall be lawful to shoot at, kill, or destroy hares. But the Statute of James, as far as relates to *shooting partridges and pheasants*, appears to be virtually repealed by subsequent statutes (u).

With respect to hares and rabbits, the 6th section of 22 and 23 C. 2. c. 25. (v) enacts "That  
 " any person found setting or using any snares,  
 " harepipes, or other like engines, shall upon con-  
 " viction, make compensation to the owner, and  
 " shall forfeit a sum of money, not exceed-  
 " ing 10s. for the use of the poor of the parish,  
 " in the discretion of the justice."

### III. OF BUYING AND SELLING GAME AND HAVING IT IN POSSESSION.

We find very early provisions against the *buy-3. OF BUYING AND SELLING GAME AND HAVING IT IN POSSESSION.* ing and selling of game. The Statute of 32 Hen. 8. c. 8. (w) subjected every person who *sold* or *bought* any pheasant or partridge, unless he were an officer of the royal household, to a penalty of 6s. 8d. for every pheasant, and for every partridge 3s. 4d. Then followed the 2 J. 1.

(t) Post, Appendix, 690. statutes.

(u) 22 and 23 C. 2. c. 25.

(v) Post, Appendix, 448.

—4 W. & M. c. 28. 5—Ann.

(w) Post, Appendix, 382.

c. 14. and other subsequent

3. OF BUYING AND SELLING GAME AND HAVING IT IN POSSESSION. C. 27. s. 4. (x) which enacts that every person who shall *sell*, or *buy to sell again*, any deer, hare, partridge, or pheasant, except partridges and pheasants reared and brought up in house or houses, or brought from beyond the seas, shall forfeit for every deer so bought and sold 10s. each hare 10s., each partridge 10s., and each pheasant 20s.

But the regulations upon which prosecutions are now usually founded are the 4 and 5 W. & M. c. 23. the Stat. 5 Ann. c. 14. s. 2. 9 Ann. c. 25. and the 28 Geo. 2. c. 12.

The 4 and 5 W. & M. c. 23. s. 3. (y) enacts,  
 “ That in case any game shall be found in the  
 “ house, outhouses, or other places of an unquali-  
 “ fied person, and he does not give a good  
 “ account how he came by it, or prove that he  
 “ purchased it, so as to satisfy the justice, he  
 “ shall forfeit for every head of game not less  
 “ than 5s. nor more than 20s., half to the in-  
 “ former and half to the poor of the parish.”

By the 5 Ann. c. 14. s. 2. (z) it is enacted,  
 “ That if any higler, chapman, carrier, inn-  
 “ keeper, victualler, or alehouse-keeper, shall  
 “ have in his custody, or shall *buy, sell, or offer to*  
 “ *sell* any hare, pheasant, partridge, moor, heath  
 “ game, or grouse, (unless in the case of a carrier  
 “ when it is sent by a person qualified) shall forfeit

(x) Post, Appendix, 423.

Queen v. George. 6 Mod. 57.

(y) Post, Appendix, 460.

Post, Appendix, 1003.

See a decision upon this Act,

(z) Post, Appendix, 447.

for each head of game 5*l.* recoverable as hereafter specified.

3. OF BUYING  
AND SELLING  
GAME AND  
HAVING IT IN  
POSSESSION.

By the 4th section (2) of this statute "If a gamekeeper shall sell any game without the consent or knowledge of the lord or lady of the manor, he shall be committed to the house of correction for three months, there to be kept to hard labour." But this regulation is not applicable to a gamekeeper appointed to kill game not for the use of the lord or lady of the manor under the 48 Geo. 3. c. 93.

The 9 Ann. c. 25. s. 2. (a) enacts, "That if such game be *found in the shop, house, or possession*, of any person or persons *not qualified* in his own right to kill game, or being entitled thereto *under some person so qualified*, the same shall be adjudged an *exposing thereof to sale*, within the meaning of that and the last Act."

The 28 Geo. 2. c. 12. (b) enacts, "That if any person or persons whatsoever, whether qualified or not qualified to kill game, shall *sell, expose, or offer to sale any such game*, he shall forfeit the same penalty as an highler, that is 5*l.* for each head of game." And the second section enacts, "That if any such game shall be found in the shop, house, or possession, of any poulterer, salesman, fishmonger, cook, or pastry cook, the same shall be adjudged to be an exposing thereof to sale

(2) Post, Appendix, 480.

(a) Post, Appendix, 483.

(b) Post, Appendix, 550.



3. OF BUYING  
AND SELLING  
GAME AND  
HAVING IT IN  
POSSESSION.

“ within the true intent and meaning of that Act,  
“ and of the 5 Ann. c. 14.”

Upon these statutes it may be observed that the object of the legislature originally was to prevent the buying and selling of game, and as difficulties might occur in proving the sale, or offering to sale, it has been enacted, that the *bare possession* of game, by an unqualified person shall be deemed an exposure to sale. By the latter statutes there is no specific penalty for *buying* game, and therefore a person qualified to kill is not subject to any penalty for *buying* game, though an unqualified person would be liable to the penalty for having game in his possession, unless he obtained it under a qualified person. By the first Statutes, 32 Hen. 8. c. 8. and 2 J. 1. c. 27. all persons were prohibited from buying, or from buying to sell again, as well as selling, and subjected to pecuniary penalties, in which respect the modern regulations differ from the more ancient.

In the case of *Curl v. Bolter* (c), it was decided that a poulterer is not a *chapman* within the meaning of the 5 Ann. c. 14. and an objection was taken, that even a chapman, if qualified to kill game, is not liable to a penalty for selling it. This gave rise to the Statute 28 Geo. 2. which we have seen (d) subjects all persons, whether qualified or not, to

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(c) Sayer. 191.—Post Appendix, 1105. (d) Ante, 105.

penalties for selling game or exposing it to sale, and enacts that if such game shall be found in the possession of any poulterer, salesman, fishmonger, cook, or pastry-cook, the same shall be adjudged an exposing to sale.

3. OF BUYING  
AND SELLING  
GAME AND  
HAVING IT IN  
POSSESSION,

Upon the Statute 9 Ann. c. 25. it has been held (e) that the penalty is *5l. for every head of game*, and that although it is more correct to describe the offence as an exposing to sale, yet that it is sufficient in a declaration under this Act merely to allege that the defendant, not being qualified, *had a hare in his possession* (f); and Lee, Ch. J. said, “ It has been objected that though evidence of the defendant’s having had a hare in his possession would have been evidence of his exposing a hare to sale; yet, as the offence created by the statute is the exposing a hare to sale, it ought to have been alleged that the defendant did expose a hare to sale; but we are of opinion the allegation is sufficient, it being enacted by the second section of that Statute, ‘ That if a hare shall be found in the possession of any person whatsoever, not qualified to kill game in his own right, nor entitled thereto under some person so qualified, the same shall be adjudged, deemed, and taken to be an exposing thereof to sale, within the true intent and meaning of this act.’ ”

It has been reported (g) that Mr. Justice Bul-

(e) *Bluet v. Needs*, 2 Comyns, 522. post, Appendix, 1058.

64. Post, Appendix, 1104.

(g) *Molton v. Cheesely*, 1 Esp. Rep. 123. post, Appendix, 1248.

(f) *Jones v. Bishop, Sayer*,

8. OF BUYING  
AND SELLING  
GAME AND  
HAVING IT IN  
POSSESSION.

ler held, that if it appears that game has been killed by accident it is no offence within the statute, but that in such case it should be left where it was killed, for if it be taken away it subjects the party to the penalty for having game in his possession. But this must be taken with some qualification, and it will be competent for the party to shew, that he was justified in taking the game. For in *Warnesford v. Kendall* (*h*) it was decided that the possession of game by a servant employed to detect poachers, who took it up after it had been killed by a stranger on the manor, in order to carry it to the lord, is not a possession within the penalty of the game-laws. And Lord Ellenborough said, “The question is whether the possession of the defendant were such as to constitute an offence, and to subject him to a penalty under the statute? He did not claim the hare as his property, or acquire the possession of it for himself, but for his master, on whose manor it was taken: and if this be an offence no case can be stated in which an unqualified person can innocently come in contact with game. It may as well be said that if a qualified man returning home with a bag of game were to fall from his horse, another could not lawfully take up the bag in order to assist the owner.” The case of *Molton v. Cheesely* must have been imperfectly stated. And Grose, J. observed, “that the possession of the game by the defendant was rather for the

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(*h*) 10 East. 19. — Post, Appendix, 1344.

purpose of protecting the game than in breach of the laws for preserving it.

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#### IV. OFFENCE OF TAKING EGGS OF GAME, &c.

BESIDES these provisions which relate to the game itself, there are several for the preservation of their *eggs*. By the 25 Hen. 8. c. 11. s. 5. (*h*), (which the 3 & 4 Edw. 6. c. 7. s. 2. declares shall continue, though the other sections are repealed,) it is enacted that no person shall, between the 1st day of March and the last day of June, take or destroy any eggs of any kind of wild fowl, from or in any nest, place, or places they shall chance to be laid, upon pain of imprisonment for one year, and of forfeiting 20*d.* for every egg of a crane or bustard, 8*d.* of bittour, heron, or shoveld, and 1*d.* of every mallard, teal, or other wild fowl, half to the king and half to the party suing.

IV. TAKING  
EGGS OF  
GAME, &c.

By the 2 J. 1. c. 27. s. 2. (*i*), it is enacted that all and every person and persons who shall take the eggs of any pheasant, partridge, or swans, out of their nests, or willingly break, spoil, or destroy the same in the nests, and shall be convicted by his confession, or the testimony of two witnesses, before two justices, he shall forfeit 20*s.* for every such egg.

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(*h*) Post, Appendix, 384.

(*i*) Post, Appendix, 421.



## V. OFFENCE OF BURNING HEATH, &amp;c.

V. BURNING  
HEATH, &c.

It is provided by the 4 & 5 W. & M. c. 23. s. 11. (*k*) that, “for the better preserving the red  
 “and black game of grouse, no person on any  
 “mountains, hills, heaths, moors, forests, chases,  
 “or other wastes, shall presume to *burn*, between  
 “the 2d February and 24th June, *any grig, ling,*  
 “*heath, furze, goss, or fern*, upon pain that  
 “the offender shall be committed to the House of  
 “Correction for any time not exceeding one  
 “month, and not less than ten days, there to be  
 “whipt and kept to hard labour.” As this act  
 gives no direction how such offenders shall be  
 convicted, the only course of proceeding upon it  
 is by indictment (*l*). But the 28 Geo. 2. c. 19.  
 s. 3. (*m*) contains a general regulation upon this  
 subject, and enacts, that if any person, not hav-  
 ing a right or legal licence to do the same, shall  
 set fire to, burn, or destroy, or shall abet, aid,  
 or assist in or at the burning or destroying of any  
 goss, furze, or fern, growing or being in or  
 upon any forest or chase in England, without  
 the licence or consent of the owner or proprie-  
 tor, or the person chiefly intrusted with the  
 care of such forest or chase, upon conviction be-  
 fore one justice, or confession, or on the oath of

(*k*) Post, Appendix, 465. the county of Nottingham,

(*l*) Burn's Justice, tit. 5 Ann. c. 14. s. 5. post, Ap-  
 Game, 466.—4 Term Rep. pendix, 480.

202. As to the burning of (*m*) Post, Appendix, 551.  
 ling in Sherwood Forest, in

a witness, or within view of the justice, shall forfeit not less than 2*l.* or more than 5*l.* one half to the informer and one half to the poor of the parish. There are some directions concerning burning ling, &c. in particular places, which are of the same kind as this general provision, and it will therefore be unnecessary here to mention them.

V. BURNING  
HEATH, &c.

## CHAPTER VI.

OF THE LAW RELATING TO DEER, RABBITS,  
AND PIGEONS.

**T**HERE are some peculiar regulations relating to *particular* game and animals, such as Deer, Rabbits, and Pigeons, which we will consider in this chapter.

## I. LAW RELATING TO DEER.

## 7. DEER.

1. Property at  
common law.

The law relating to deer may be arranged under the three following heads:—First, with respect to the property in them, by the common law ; secondly, by the ancient statutes ; and lastly, the existing regulations against taking them.

Formerly deer, like other animals, *feræ naturæ*, were not the subjects of absolute property, and a person could only have a property in them *ratione loci*, unless they were tame and reclaimed ; and even if the king's deer escaped from his forest, it was lawful for any one to kill them, when upon his land (*a*), and it was not punishable criminally to take away deer, unless they were tame and reclaimed, and being *feræ naturæ*

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(*a*) Per Houghton, J. in Rep. 3. 4. 30. post, Appen-  
Duel v. Saunders, 2 Roll. dix, 903.

they were not distrainable; and where a man brought an action for chasing and taking away deer, hares, rabbits, &c. it was considered incorrect to say *suos*, because he has them only for his game and pleasure *ratione privilegii*, whilst they are in his park, warren, &c. and not being personal property, but as incident to the park, &c. where they were, if the owner of the park died, the deer went to his heir, and not to his executors (*b*).

Thus, in the case of the Abbot de Dieu v. T. S. (*c*), it was considered, that when deer escape out of the verge of the forest, the property is out of the king; because the possession of land creates the property in such beasts; for if a man hunt in my park, I must declare *quod parcum fregit*, and *feras ibidem cepit*, &c.; but not *feras meas*, for if they are out of my park, *occupanti conceditur*. Though it was insisted, that if a stag go out of the forest, and the foresters follow him, and make proclamation in the next vill, after such proclamation it is not lawful for any one to take him. And in a case in the Year Book (*d*), it was held, that if one grant a deer to another, the grant is void, because a person cannot grant that which he has not in himself, and no property lies in deer, for they are *feræ naturæ*, and wild beasts, and the property can be in no one; and,

(*b*) Per Willes, Ch. J. in *Davies v. Powell*, Willes. Rep. 46. post, Appendix, 1063.

(*c*) Year Book, 7 Hen. c. 6. post, Appendix, 731.

(*d*) 18 Edw. 4. p. 18. post, Appendix, 775.



1. DEER. before the statute, if any man had taken away deer, and killed them, he would have no remedy; and if a man grants *omnia averia sua*, the deer enclosed in the park pass not; and yet, if he be outlawed in trespass, the king shall kill and dispose of them to his own use; and there is a difference where a person has a thing by reason of the nature of the thing itself, and where by reason of his land; as, in the first case, he has the beasts by reason of the nature of the beasts themselves, but the deer he has by reason of his park, and not by reason of themselves. In a subsequent case (*e*), an indictment for killing a hart proclaimed was objected to, because it did not state in what place the defendant had killed it, and if it were out of the bounds of the forest it was lawful for him to kill it. In another case (*f*), where the plaintiff had entered the queen's forest, and driven out a deer, and killed it on his own land, upon which the forester came and took away the deer, and the plaintiff for this brought an action of trespass against him, he failed in his action merely on the ground of the local property of the queen in the deer not being divested by the wrongful act of the plaintiff; and the Court admitted the general rule, that these beasts, which are *feræ naturæ*, belong to him in whose possession they are, but if they are

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(*e*) Year Book, 21 Hen. 8. p. 90. post, Appendix, 7. p. 30. post, Appendix, 805. See also post, Appendix, 828.  
804.

(*f*) Year Book, 12 Hen.

at large, then *capiat qui capere possit*; but if they are once in possession, it is not lawful for any one to take them out of it; and that, in this case, the hart was in possession, and then it was not lawful for any one to chase it, or take it out of such possession; though, if it had strayed out, of its own accord, then any one might have taken it. So if my park adjoins your's, and my stags come into your park, I cannot retake them; but if you break my pales, and chase them out of my park, then I may retake them.

I. DEER.

If deer escape from a forest, a person may chase them from his land with dogs, provided he call them back before they enter the forest (*g*). But if a person be trespassing out of a close, in a foot-path, he is liable in trespass for his dogs killing a deer, though he endeavoured to restrain them; the defendant being responsible for the consequence of his illegal entry into the close (*h*). And a park-keeper may legally shoot dogs which, having chased a deer out of private ground into a park, pursue and kill it there (*i*).

But the nature of property in deer is now considerably changed, by modern decisions. In the case of *Davies v. Powell* (*k*), an action of trespass was brought for entering the plaintiff's

(*g*) Year Book, 18 Hen. 6. p. 21. post, Appendix, 740. and *Millan v. Fawdreg*, Latch. 120. post, Appendix, 924.

(*h*) *Beckwith v. Shoredike* and another, 4 Burr. 2092.

post, Appendix, 1143.

(*i*) *Barrington v. Turner*, 3 Levinz. 28. post, Appendix, 964.

(*k*) *Willes. Rep.* 46. post, Appendix, 1061.

I. DEER. close, and taking and carrying away deer; and the defence was, that it was done under a distress for rent, and it did not appear that the close was a lawful park, but that it had been demised by indenture to the plaintiff, without particularly specifying the deer, but with a covenant from the plaintiff to keep up, during the term, 100 living deer; and it was held that the deer were distrainable for the rent in arrear. And Lord Ch. J. Willes, after noticing the ancient law, observed, “ Deer were formerly kept only in forests, or chases, or such parks as were so either by grant or prescription, and were considered rather as things of pleasure than of profit; but now they are frequently kept in enclosed grounds, which are not properly parks, and are kept principally for the sake of profit, and therefore must be considered as other cattle. That possibly in the case of a park, properly so called, which must be either by grant or prescription, the deer may in some measure be said to be incident to the park, and might not be distrainable, and would go to the heir and not to the executor; but that, with respect to other enclosed grounds, when the nature of things changes the rules of law must change too; when it was holden that deer were not distrainable, it was because they were kept principally for pleasure, and not for profit, and were not sold and turned into money, as they are now. But now they are become as much a sort of husbandry as horses, cows, sheep, or any other cattle. When-

ever they are so, and it is universally known, it would be ridiculous to say that, when they are kept merely for profit, they are not distrainable as other cattle, though it has been holden they were not so when kept merely for pleasure. But with respect to deer in forests, chases, and parks, properly so called, the Court made no determination. Tythe is not payable of common right of things *feræ naturæ*, as of deer in a park (*l*), but by special custom tythe may be due (*m*).

*Secondly*, we have to consider the ancient statutes relating to deer, and the decisions upon them. It was provided by the *Charta Forestæ* (*n*), that no man should thereafter lose either life or member for killing the king's deer, but should pay a grievous fine, or be imprisoned for a year and day; and if he should find sureties, he should then be discharged, if not, he should abjure the realm. And by the same statute it was provided, that an archbishop, bishop, earl, or baron, coming to the king at his command, may, in passing through the forest, kill one or two of the king's deer. By the *Stat. Westm. the First* (*o*), it was provided that trespassers in parks and ponds should pay great amends for their trespasses, and

2dly, *Ancient statutes, and decisions upon them.*

(*l*) *Com. Dig. tit. Dismes*, 849.—*Cooper v. Andrews*, 11. 4. *Gwilym*. 275. post, *Appen.*

(*m*) *Id. tit. Dismes*, 11. 16. 883 —*Comyn's case*, *Hetley*, 60. post, *Appen.* 924.

833.—*Beddingfield v. Feake*, (*n*) Post, *Appendix*, 355.

*Moore*. 909. post, *Appendix*, (*o*) 3 *Edw. 1. c. 20.* post, *Appendix*, 357.

845.—*Sharp v. Sharp*, *Noy. Rep.* 148. post, *Appendix*,



**I. DEER.** be imprisoned three years, and make fine at the king's pleasure. And by the Statute de Malefactoribus in parcis (*p*), it was enacted, "That any forester, parker, or warrener, finding any trespassers wandering within his liberty, intending to do damage therein, and will not yield themselves, he may seize them, and if he kill them in the attempt he shall not be liable to any punishment." The 1 Hen 7. c. 7. (*q*) makes the unlawful hunting by night, and concealment of it, a felony. And the 19 Hen. 7. c. 11. (*r*) prohibits any person, not having a park, chase, or forest of his own, from keeping any nets, or deer hayes, or buckstalls, upon pain of forfeiting 10*l.* per month; and subjects a party stalking with any bush or beast to any deer, unless in his own ground, to 10*l.* penalty. The 31 Hen. 8. c. 12. (*s*) makes it felony in the day-time, when disguised, to enter the forest, chase, or park of any of the royal family, with intent to steal deer, or drive them out. The 5 Eliz. c. 21. s. 3. (*t*) again alters the law, and makes it only three months imprisonment, and treble damages for entering a park or ground where deer are kept, and driving out or killing the deer. The buying or selling of deer is prohibited by the 2 J. 1. c. 27. s. 4. (*u*), under pain of 40*s.* for each deer. And the 3 J. 1. c. 13. (*x*)

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(*p*) 21 Edw. 1. s. 2. post, Appendix, 359.

(*q*) Post, Appendix, 376.

(*r*) Post, Appendix, 380.

(*s*) Post, Appendix, 387.

(*t*) Post, Appendix, 410.

(*u*) Post, Appendix, 423.

(*x*) Post, Appendix, 428.

subjects persons who enter a park, and hunt or kill any deer without the leave of the owner or occupier, to three months imprisonment and treble damages and costs, and authorizes any person, having a freehold estate of 100*l.* to seize all guns, buckstalls, &c. kept or used to kill deer. And the 7 J. 1. c. 13. (*y*) declares, that the same shall be an offence, whether committed in the day or night, and enables the party grieved to recover 10*l.* or treble damages at his election.

The 13 C. 2. c. 10. (*z*) subjects the offender to six months imprisonment, and 20*l.* penalty. The Stat. 3 W. & M. c. 10. (*a*) subjects a person, who has been once convicted, to a penalty of 20*l.* for any subsequent coursing or hunting, where no deer is taken, and to 30*l.* if any be taken, and authorizes constables, by warrant from a justice of the peace, to search for deer, and makes it punishable with three months imprisonment in the night-time to pull down the pales or walls of any park or enclosed ground where deer are kept. The 5 Geo. 1. c. 15. (*b*) contains several regulations with regard to the mode of conviction, and the removal of proceedings, and subjects foresters, park-keepers, and other officers, to 50*l.* for every deer killed or taken away, and enlarges the penalty for destroying the fences of parks. The 5 Geo. 1. c. 28. (*c*) enacts "That if any person shall enter any park, paddock, or other enclosed

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(*y*) Post, Appendix, 438.

(*z*) Post, Appendix, 444.

(*a*) Post, Appendix, 455.

(*b*) Post, Appendix, 507.

(*c*) Post, Appendix, 511.

1. DEER. ground, where deer are usually kept, and shall wound or kill any deer, shall be transported for seven years." The Act 9 Geo. 1. c. 22.(d) commonly called the Black Act, (which is considered as virtually repealed as to this purpose by 16 Geo. 3. c. 30.) enacted, "That if any person shall unlawfully hunt, wound, kill, destroy or steal any red or fallow deer, fed or kept in any places in any of the king's forests or chases, which are or shall be enclosed with pales, rails, or other fences, he shall be guilty of felony without benefit of clergy." The Statute 10 Geo. 2. c. 52. s. 7.(e) which, as far as relates to the taking of deer, is also virtually repealed by the 16 Geo. 3. c. 30. enacted, "That if any person who has been convicted of unlawfully coursing, hunting, taking in toils, killing, wounding, or taking away any red or fallow deer, in any open or *unenclosed* forest, or chase, where deer are usually kept, and shall be guilty of a second offence, he shall be transported for seven years; and that if any armed person shall enter a forest, chase, or park, wherein deer are usually kept, whether enclosed or not, with intent to take deer, and shall unlawfully beat any keeper thereof in the execution of his office, he shall be transported for seven years."

Upon the Stat. 1 Hen. 7. c. 7.(f) it was considered by Lord Coke(g), that, on the clause concerning concealment of the offence, it must be a judicial

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(d) Post, Appendix, 514.

Appendix, 377.

(e) Post, Appendix, 527.

(g) 3 Inst. c. 21. page 77.

(f) Ante, 118. Post,

concealment to constitute the felony, and not an extrajudicial one before one of the council, or a justice of the peace; and that before the concealment can be a felony, the party must be convicted of the hunting upon Not Guilty pleaded first; and after such conviction, then he must be indicted again upon the whole matter, that he feloniously did conceal it against the form of the statute; and if the offender, upon the first indictment, confesses the offence, then it is such a judicial confession as the act intended, and no felony within it. But Lord Hale (*h*) disputes this extraordinary exposition, which is contrary to the decisions on the subject (*i*); for Manklove (*k*) was indicted on this statute, that being examined before a justice of the peace, he denied having done it, on which indictment he was convicted for the denial; and Montague, Ch. J. said, "That there were four things necessary, under this statute, to make it a felony, first, information given to the justice of the peace of the offence; secondly, his warrant made thereon; thirdly, the examination of the offence; and, fourthly, the denial of the offender." And it was held in the case of Wormall and others (*l*), where three were indicted for killing a park-keeper, that when they were pursued, they ought to have submitted, and that though one of the keepers first hurt one of

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(*h*) 1 Hale's Pl. Cr. 569.

(*k*) Id. Ibid.

(*i*) Post, Appendix, 908.

(*l*) 2 Rolles Rep. 120.

and Manklove v. ———

Post, Appendix, 907.

2 Roll. Rep. 133.



I. DEER.

the defendants, who then turned back and killed him, this was murder in all.

In the *King v. Drake* (*m*), several objections were taken to a conviction upon the Statute 13 C. 2. c. 10. and the Court held, that the offence was hunting the deer, and that though it was necessary to allege that the offence was committed without the consent of the owner of the park, the statement, in the commencement of the indictment, that the offenders entered the park without this consent, extended over the whole indictment, and that each defendant was liable to a penalty of 30*l.* (*n*); and it was held (though this is contrary to the modern determinations) that the oath of the informer was sufficient.

In the *King v. Pullen* (*o*), a conviction on the Statute 13 C. 2. c. 10. was affirmed, though it did not state the particulars of the evidence given by the witness, and it was decided that this statute was to be intended only of clandestine hunting, and not where the party does it only to assert a right. It was held, however, that the time of the conviction, and also the offence must appear; because the prosecution must be within six months after the offence committed.

In the case of the *King v. Chandler* (*p*), several exceptions were taken to a conviction on the Stat. 3 and 4 W. & M. c. 10. and over-

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(*m*) 2 Shower. 476. Post, Appendix, 967.

(*o*) 1 Salk. 369. Post, Appendix, 973.

(*n*) *Queen v. King* and others, 1 Salk. 182. Post, Appendix, 1014.

(*p*) *Carthew*. 501. post, Appendix, 986. and 1001.

ruled; and it was held, that the manner of the killing need not be shewn specially, and that it is not necessary to lay the offence to have been committed on any certain day, and that it is sufficient if it be laid between such a day and such a day (*q*); nor is it necessary to conclude *contra pacem*.

In the *King v. Speed*, an exception was taken, that to a conviction of the same statute, that *illite occidit* is not sufficient, but it ought to say *furtive* or *carranimo furandi*; but (*r*) Lord Holt said, “ If there is a pretence of right, we ought to suppose, that the justice before whom the conviction for deer-stealing took place, would do right to acquit the defendant. The extent of the act was to prevent killing in a clandestine manner by stealth; but it is enough to lay the fact in the words of the act of parliament, and that ought to be admitted upon evidence. The title of the act is against deer-stealers, but there is not any such word in the body of it. And therefore if there was a dispute concerning the limits of a walk in a forest, and one claims as part of his walk, what is in fact part of the division of another, and accordingly kills deer there, the case is out of the intent of the act, but plainly within the words. The intent of the act was to punish rogues and vagabonds, and not to punish persons, who, by mistake in the execution

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(*q*) *Queen v. Simpson*, 10 Mod. 248. post, Appendix, 1016. (*r*) *Lord Raym.* 583. post, Appendix, 988.

**1. DEER.** of their trusts exceed what the law warrants. If the keeper of a walk gives leave to a third person to kill a deer, though this licence does not give sufficient authority to the third person to kill it, yet it will not be an unlawful killing within the statute, because there is a colour of right.

In the *Queen v. Moore* (s) a conviction was quashed, because it said only that the defendant killed deer in a certain place, where they had been usually kept, and did not say enclosed. And in the *Queen v. Whistler* (t), it was held by three judges, against the opinion of Lord Holt, "that a man who assists another to kill deer, and lends him any thing for that purpose, is liable to the penalties of the 3 and 4 W. & M. c. 10. (u) made in terms only against persons killing deer." In the *Queen v. Allenby and others* (x), a conviction for deer stealing was quashed, because it was only alleged that the defendant killed it in a park, without adding, where deer used to be kept. And in the *Queen v. Simpson* (y) it was decided that the justices of the peace may convict the offender in his absence upon his default to appear, being duly summoned. And in the case of the *King v. Dore* (z), it was held that a man might

(s) Ld. Raym. 791. post, Appendix, 1016.  
Appendix, 991.

(t) 2 Ld. Raym. 842. post, Appendix, 991. (y) 10 Mod. 341. & 378. post, Appendix, 1021 to 1030.

(u) Ante, and post, Appendix, 454. (z) Andrews. 302. 352. post, Appendix, 1075. 1077.

(x) Gilbert. 120. post,

## I. DEER.

be convicted of deer stealing upon his confession to a witness who deposes before the justice, though it does not appear that he confessed the killing the particular deer mentioned in the information. And it was also held that upon affirmance of a conviction for deer stealing, the prosecutor's costs are to be taxed as between attorney and client. And in the *King v. Calcutt and others* (a), it was held, that in a conviction for killing deer in the purlieu of the forest, it is not necessary to allege that deer were usually kept there.

*Thirdly*, the Statute 16 Geo. 3. c. 30. (b), the 27th section of which expressly repeals nine of the statutes which we have stated in the second part of this chapter, and the 42d Geo. 3. c. 107. and which in part repeals the 16th Geo. 3. and the 51st Geo. 3. c. 120. are the existing regulations relative to the unlawful taking of deer.

3dly, the 16 Geo. 3. c. 30. and subsequent regulations and decisions thereon.

By the 16 Geo. 3. c. 30. (c) any person hunting, taking, shooting at, wounding or killing any red or fallow deer, in any forest, chase, purlieu, or ancient walk, whether enclosed or not, or in any enclosed park, paddock, wood, or other enclosed ground, where deer are usually kept, without being duly authorized, and others aiding, abetting, or assisting therein, the person attempting to kill shall forfeit 20*l.* the person killing 30*l.* for every deer, and, if he be a keeper, double the penalty, and, for a second offence, the of-

(a) 2 Strang. 1119. post, Appendix, 1078; but see to 657.

ante, 125, and Appendix, 1016. (b) Post, Appendix, 641.

(c) Id. *ibid.*



## I. DEER.

fender shall be transported, and directs the course of proceeding. It then enacts, in the 8th section, "that if any person or persons shall wilfully pull down or destroy the *pales*, or part of the walls of any forest, estate, purlieu, ancient walk, park, paddock, wood, or other ground, where any red or fallow deer shall be then kept, without authority, every person so offending shall forfeit the same penalty as for the first offence."

The 9th section authorizes park-keepers and other persons intrusted with the care of deer, to seize any armed person who may be found in such places, and subjects them, in case of forcible resistance, and of beating such park-keeper, to transportation for seven years.

The 42 Geo. 3. c. 107. (d) materially alters the penalties of these offences. The 6th section expressly repeals the penalties of forfeitures and punishments provided by the 16 Geo. 3. for the unlawful hunting, or killing of deer in the places mentioned in that statute, and makes it a *felony*, with the punishment of transportation for seven years, for hunting or killing, or assisting in hunting or killing, any red or fallow deer, kept or being in any forest, chase, purlieu, or other ancient walk, or any enclosed park, paddock, wood, or other *enclosed ground*, where deer are usually kept. The second section makes distinction as to the degree of criminality, and the punishment of hunting or killing deer in the *unenclosed* part of

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(d) Post, Appendix, 667.

any forest, chase, purlieu, or ancient walk, and if done without lawful authority, the penalty is 50*l.*, or for a keeper double that penalty; and it enacts that all the provisions of the 16 Geo. 3. as to the modes of recovery, &c. shall be applied to this act. And the 4th section directs, that where a person has been convicted of any offence under either of these two acts, for which a pecuniary penalty is imposed, and shall offend a second time, he shall be deemed a *felon*, and transported for seven years.

The recent Statute of 51 Geo. 3. c. 120. gives a power to the magistrate to *mitigate* the penalty of 50*l.* for hunting or killing deer in the unenclosed part of any forest, chase, purlieu, or ancient walk to 20*l.*

Many of the decisions on the former acts re-  
 lative to deer, which are not now in force, may  
 still be applicable in the construction of the ex-  
 isting regulations, for which reason I have stated  
 them in detail in the second division of this  
 subject. Decisions.

In the case of the *King v. Davis (e)*, it was held that though the 16 Geo. 3. c. 30. expressly repeals several of the acts relative to deer stealing, but takes no notice of the Black Act, 9 Geo. 1. c. 22. yet it is a virtual repeal of that act, because it inflicts a milder punishment for the same offence. Though the statutes only mention red or fallow deer, yet the cross breeds, such as what

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(e) Leach. Cr. L. Cases, 2 East. Pl. Cr. 609. and 306. post, Appendix, 1200. Leach. C. L. Cases, 888, 892.

**I. DEER.** are called the bastard manald, bred from a manald buck and a fallow doe, are within the act (*f*). And in the King v. Rogers (*g*), it was decided, that to support an indictment on the 42 Geo. 3. c. 107. for coursing deer in an enclosed ground, it is necessary on the part of the prosecution to call the *owner* of the deer to prove that he did not give his consent to the prisoner to course them.

## II. LAW RELATING TO RABBITS.

**II. RABBITS.** IN considering the places peculiarly privileged for game, and the regulations prohibiting the killing it in the night, we have noticed some of the provisions relative to *rabbits* (*h*); we will now consider the other decisions and enactments relative to this description of property. Rabbits are not, in legal acceptance, game, nor are they included in a statute relating to it, unless expressly named (*i*). In many respects they are considered as a more valuable property than game, and we therefore find, that taking them, in some cases, is much more penal.

Commoner  
and others de-  
stroying rab-  
bits, damage-  
feasant, or  
burrows.

In the reign of Elizabeth (*k*), it was decided, that a commoner cannot kill rabbits upon the common, however injurious to his interest in the

(*f*) Thos. Heath's case, 2 East's Pl. Cr. 609. post, Appendix, 1293.

(*g*) 2 Camp. 654. post, Appendix, 1360.

(*h*) Ante, 101.

(*i*) Rex v. Yaites, 1 Ld. Raym. 151. post, Appendix, 981.—Ante, 1, 2.

(*k*) Post, Appendix, 826.

pasture, and that if he do he is liable to an action of trespass. It was urged for the commoner, that unless he could kill the rabbits, he would be without remedy; but it was answered by the Court, that he might have an action on the case or an assize for putting the rabbits upon the land, if the owner of the land leave not sufficient common for the cattle of the commoner. Again, in *Bellew v. Langdon* (*l*), the same point was decided. And the Court said a rabbit is a beast of warren and profitable as deer are, and are not to be compared to vermin, and therefore the keeping of them by the owner of the soil is lawful, and the killing of them not justifiable. In *Haddesden v. Grisel* (*m*), the Court were at first of opinion that a commoner might destroy rabbits, for they are *feræ naturæ*, and that a commoner hath nothing to do with the land, but to put in his cattle, and may not meddle with any thing of the lord's there, as the lord may have great beasts there, so he may have beasts of warren, and the commoner cannot destroy them, and if the lord, by reason of them, should surcharge the common, and deprive him of his common, he ought to have his remedy by assize, or action upon the case, but he may not kill the conies. Nor can a commoner cast down or fill up the burrows which are made in the waste where he has right

(*l*) Cro. Eliz. 876. post, Appendix, 854. Yelverton, Appendix, 848. 143. S. C. post, Appendix,

(*m*) Cro. Jac. 195. post, 855.



II. RABBITS. of common (*n*). In *Sandford v. Havil* (*o*), an action of trespass was brought for hunting in the plaintiff's free warren, and killing rabbits, and the defendant pleaded a right of common in the place where the trespass was committed, and a prescription to kill rabbits surcharging the common, as appertaining to his messuage; and judgment was given for the plaintiff, because a man cannot make such a prescription in the free warren and freehold of another, nor can he prescribe to hunt, kill, and carry away rabbits, as appertaining to his messuage. Though it seems to have been considered that a man may prescribe to have so many rabbits to spend in his house. And in *Carril v. Pack* (*p*), it was held, that coney burrows being incident to a free warren, a commoner cannot legally kill them in it, though made de novo. And in *Grice v. Lee* (*q*), it was held that a commoner may support an action on the case for making so many rabbit burrows as to destroy the common. In the case of *Cooper v. Marshall* (*r*), this question was again brought before the court in an action of trespass for entering the plaintiff's close, and filling up the rabbit burrows there, and there was a 2nd count for the same injury in the plaintiff's free warren, and the defendant justified under a right

(*n*) *Hawsey v. Hagburton*, Cro. Jac. 229. post, Appendix, 856.

(*o*) *Godbolt*, 184. post, Appendix, 865.—*Samborne v. Harillo*, Bridg. 9. post, Appendix, 913.

(*p*) 2 Balst. 115. post, Appendix, 867.

(*q*) *Winch*. 16. post, Appendix, 909.

(*r*) 1 Burr. 259. post, Appendix, 1116.

of common, and that the burrows were unlawfully newly made there, whereby the common was surcharged and spoilt, and that therefore he filled up and spoilt the burrows. To which plea the plaintiff demurred, and after a review of the authorities the Court held the justification bad. And Lord Mansfield said, “ the lord has a right to put conies upon the common. If the lord surcharges, the commoner is injured in his right of common, it is true, but what is the commoner’s remedy? not to abate, not to be his own judge in a complicated question, which may admit of nicety to determine: there is a certain line to be drawn; the lord has a right so far but no farther, yet the commoner cannot destroy or drive off the conies, nor consequently can he destroy the burrows, which is in effect destroying the conies. He may bring his assize or action, but he cannot be his own judge.

But there is a distinction between a commoner’s destroying rabbits put on the waste by the lord, and a party’s killing them when they get into his own land (*s*). It was decided, that in the latter case, the owner of the land might kill the rabbits, for which reason no action could be supported against a person for keeping rabbits on his own land, which escaped and did damage upon the lands of another. So in a subsequent case (*t*), it was even held, that a commoner may

(*s*) Cro. Eliz. 547. post, Cro. Car. 387. post, Appendix, 843.

Appendix, 928.

(*t*) Hinsley v. Wilkinson,

II. RABBITS. kill rabbits upon the waste which have not been put on by the lord, nor have burrows there, but have escaped from the adjoining land, and that he could not support any action against the owner of such adjoining land for keeping rabbits, however injurious to the common, nor can rabbits be taken damage feasant, and consequently no replevin lies for them (*u*).

In *Sutton v. Moody* (*x*) it was held that trespass for entering a close, though not a free warren, and killing the plaintiff's rabbits there is sustainable, though it was objected that rabbits are *feræ naturæ*, and therefore that there is no property in them in any one, though it was admitted that for hunting in a free warren and killing plaintiff's rabbits there, trespass is sustainable, because then he would have a privileged property in them; but Lord Holt observed, "a warren is a privilege to use his land for such a purpose, and a man may have a warren in his own land, and he may alienate the land and retain the privilege of warren, but this gives no greater property in the rabbits to the warrener, for the property arises to the party from the possession, and therefore if a man keep rabbits in his close, as he may, he has a possessory property in them so long as they abide there, but if they run into the land of his neighbour the latter may kill them, for then he has the possessory property.

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(*u*) Post, Appendix, 827. post, Appendix, 984. and  
 (*x*) 1 Ld. Raym. 250. 1002.

Tithe is not payable of common right of rabbits II. RABBITS. in a warren, but it may be by custom (*y*).

With respect to the unlawful taking of rabbits, Unlawful taking how punishable. the 31 Hen. 8. c. 12. (*z*) made it felony in the night-time, or in the day-time, if disguised, to take any rabbits in the lawful warren of the king. The 3 J. 1. c. 13. s. 2. (*a*) subjects persons who shall, in the night-time, enter any park or enclosed ground, and take any conies, to three months imprisonment and treble damages and costs. And by the Statute 22 and 23 C. 2. c. 25. s. 4. (*b*) it is enacted "That if any person shall at any time enter wrongfully into any warren or ground lawfully used or kept for the breeding or keeping of rabbits, whether it be enclosed or not, and there shall chase, take, or kill any rabbits, and shall be convicted within one month before one justice by confession, or oath of one witness, he shall be imprisoned three months and pay treble damages;" and we have seen that the 5th section provides a penalty not exceeding 10*s.* and damages to the owner in the discretion of the justice, for taking rabbits in the night-time on the borders of warrens, unless he be owner or occupier of the ground, or person employed by him; and the 6th section subjects any person setting or using snares for the taking of rabbits to similar penalties. The 9 Geo. 1. made it felony,

(*y*) Dawes v. Huddleston, Cro. Car. 339. post, Appendix, 927.—Com. Dig. Dismer, II. 14. 16.

(*z*) Post, Appendix, 387.

(*a*) Post, Appendix, 428.

(*b*) Post, Appendix, 417.



II. RABBITS. without benefit of clergy, for any person armed and disguised to appear in any warren or place where rabbits are usually kept, or to rob such warren; but, supposing the decision in Davis's case as to deer stealing to be law, this Statute must be considered as virtually repealed by the 5 Geo. 3. c. 14. s. 6. (c) which subjects a person to transportation for seven years, who in the night-time enters into any warren or grounds lawfully used for the breeding or keeping of conies, whether enclosed or not, and takes or kills any rabbits, against the will of the owner or occupier. And the 48 Geo. 3. c. 55. (d) makes it necessary for every person who shall use any dog, gun, net, or other engine, for the purpose of taking or killing rabbits, to take out a game certificate; with an exception as to the taking or destroying rabbits in warrens or in any enclosed grounds whatever, or by any person in lands in his occupation, either by himself or by his direction or command. In the King v. Gaite (e), where the defendant had been convicted of killing rabbits in a private warren, upon an information before a justice of the peace, and was fined 20s., the conviction was quashed because the justice had no authority to set a fine upon a man for such offence; for the Statute 22 and 23 C. 2. c. 25. s. 4. gives treble

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(c) Post, Appendix, 614. rabbits.

In East's Pleas of the Crown,  
2 Vol. 614. the 9 Geo. 1. is  
treated as still in force as to

(d) Post, Appendix, 679.

(e) 1 Ld. Raym. 151. post,  
Appendix, 981.

damages and costs, but no fine ; and the Statute II. RABBITS.  
4 and 5 W. & M. c. 23. extends only to game,  
which cannot be extended to rabbits kept in a  
private warren.

In another case (*f*) it is reported, that upon  
a motion to quash an indictment, for entering a  
warren and hunting and killing rabbits at night,  
and the exception was, that the indictment did  
not conclude contra formam statuti, the objec-  
tion was overruled ; and the Court said, if a per-  
son has two remedies, the one by act of parlia-  
ment, and the other by common law, and takes  
one of them, he thereby determines his election.

### III. LAW RELATING TO PIGEONS.

WITH respect to the property in *pigeons* and III. PIGEONS.  
the right to erect a dove cote, the antient de- 1st. The com-  
cisions are very contradictory, but it is now mon law.  
established, that at common law any one may  
keep pigeons, and that it is not indictable as a  
nuisance to do so, nor can any action be brought  
against the party for any damage they might do.  
And before the statutes, which we shall presently  
notice, any one might shoot them whilst on his  
land, without being liable to an action (*g*), be-  
cause there is no property in them, except whilst

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(*f*) 12 Mod. 446. post, Car. 490.—2 Roll. Rep. 3,  
Appendix, 990. 4. 30. S. C. Post, Appen-

(*g*) *Duel v. Saunders*, Cro: dix, 900.

III. PIGEONS they are in the dove cote. Thus in the Year Book (*h*), we find it considered that trespass vi et armis for killing pigeons merely, is not maintainable, but it should be for breaking his dove cote and killing his pigeons. And a quære is subjoined, whether an action on the case could be sustained, since the doves were flying and had no marks by which they might be known. And in the Year Book, 18 Edw. 3. (*i*) an indictment for entering a dove cote and taking 20 young pigeons, which could neither go nor fly, was held good at common law, notwithstanding an exception was taken, as to the taking the pigeons, because the property in such pigeons was always in him to whom the dove cote belonged, since they could not go out, and he could take them at any time at his pleasure; but it was said that it would have been otherwise if he had been indicted for taking old pigeons; for the law adjudges them to belong to no person, and the property in them to be in no one, for they go out over all the country, so he could not take them at pleasure, and therefore if a person be indicted for this, the indictment is void. In Bond's case (*k*), it appears to have been considered to be illegal, and a common nuisance, for any one but the lord of the manor or the parson of the parish to erect a dove house. In a subsequent case (*l*) it was considered that no one

(*h*) 16 Edw. 4. p. 7. post, Appendix, 770.

(*i*) P. 8. Post, Appendix, 772.

(*k*) Moore's Rep. 238.—Post, Appendix, 831.

(*l*) Cro. Eliz. 547. post, Appendix, 845.

can erect a dove house but he who is lord of the manor, and if any other private man erects one, it is punishable in the leet as a common nuisance; but no action upon the case lies by any private man against the person erecting it, and the court said, they had seen it to be inquired of before the Lord Dyer, at the assizes, as a nuisance. From *Moyle v. Mayle* (*m*), it appears that if the lessee of a pigeon-house stop the holes, so that the pigeons cannot build, an action of waste may be supported.

In the case of *Pratt v. Sterne* (*n*), Coke, Ch. J. said, "There is not any reason that the lord should have a dove cote more than the tenant," and he asked the question, whether under the Stat. Edw. 2. which "inquiratur de dove cotes erected without licence," who shall give the licence. But it appears that he was ultimately of opinion that the erecting it by a freeholder was a common nuisance inquirable in a leet, but the other judges doubted, and the decision was made upon another point.

This disputed point was finally settled in the case of *Dewell v. Saunders* (*o*), in which all the Court agreed, that the erecting a dove cote by a freeholder who is not lord of the manor, nor owner of the rectory, and replenishing it with doves, is not any nuisance inquirable or punish-

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(*m*) *Owen*, 66. Post, Appendix, 847.

(*n*) 1 Roll. Rep. 200.—Godbolt, 259.—Cro. Jac. 382.—Post, Appendix, 886

to 890.  
(*o*) Cro. Jac. 490. also reported in 2 Rol. Rep. 3, 4. 30. and Poph. 141. post, Appendix, 900 to 907.



III. PIGEONS. able in a leet, for nothing is inquirable there and punishable but that which is a common nuisance to all people; but this erecting a dove-house cannot be a nuisance, but to those only whose corn they eat, and not to all persons; and therefore it is no common nuisance inquirable there. Also, if it were a common nuisance, neither the lord of the manor nor the parson could erect a dove-house more than any other freeholder, for none can prescribe to make a common nuisance; for it cannot have a lawful beginning by licence or otherwise, being an offence against the common law, for a common nuisance is to the prejudice of all people, and it is a continuing offence, and cannot be dispensed with, and therefore the opinion in *Boulston v. Hardy*, 5 Coke. 104. b. is not law, nor was it a direct resolution in point of judgment. Also the principal case proves the contrary; for if it were a nuisance every one who hath a particular grief might have an action to punish it; but this cannot be said to be a nuisance which the law protects and favours, and for the maintenance whereof statutes are provided; for it appears that a dove cote is demandable in a *præcipe* next in regard to a house, and dower shall be thereof, as 45 Edw. 3. pl. 22. and 1 Hen. 5. pl. 1. and an account lies *de columbaria*, as 10 Hen. 7. pl. 6. and therefore the common law doth not regard it as a nuisance, and the statute laws are divers which make provisions against those who take or kill them, or shoot near a dove house. And by the Stat. 18 Edw. 2. title

“Leet,” the destruction of doves is inquirable III. PIGEONS.  
in leets; 2 Edw. 4. c. 14. that none shall shoot  
at any dove cote; 8 Eliz. c. 15. which appoints  
costs for taking crows, provided they take not any  
doves; 4 J. 1. c. 27. that none shall shoot with-  
in 100 paces of any dove house, wherefore they  
all agreed that this was not any offence inquir-  
able nor punishable by the leet. But Montague,  
Ch. J. said, “if those who have not any lands at  
all should erect dove houses, and increase the  
multitude of pigeons to the grievance of the  
country, it may be inquired of before the jus-  
tices of assize, who have the like authority as to  
such things, as the justices in oyer had to redress  
them upon the people’s complaint; but not every  
lord within his leet; for the leet is to redress  
nuisances within the precincts thereof, and not  
to extend further; and the erecting of a dove  
house is not in itself a nuisance, but the storing  
it with pigeons and suffering them to fly abroad  
in the country, which is out of the leet. And  
Justice Doderidge said, “That if pigeons come  
upon my land I may kill them, and the owner  
hath not any remedy, but the owner of the land  
must take heed that he take them not by any  
means prohibited by the statute.” And Croke  
and Houghton, Justices, agreed with him. But  
Montague, Ch. J. held the contrary, “and that  
the party hath jus proprietatis in them, for they  
are as domestics, and have animum revertendi, and  
ought not to be killed, and for the killing of them

III. PIGEONS. an action lies." But it is added in the report that the other opinion is the best.

In *Hinsley v. Wilkinson* (*p*) it was argued that no action could lie for damage done by pigeons any more than it can for keeping rabbits, which come on to the plaintiff's land and commit damage there, because he may kill them. But it may be questionable, whether the statutes making it unlawful to shoot pigeons, may not alter the common law in this respect. A commoner, who cannot kill the rabbits that destroy the pasture of the common, may support an action against the lord for surcharging; and therefore, as since the statutes no one can kill pigeons, it seems reasonable that the party injured should have his remedy by action. It is observable that in *Dewell v. Sanders* (*q*), Montague, Ch. J. said, "That if those who have not any lands at all should erect dove-houses and increase a multitude of pigeons to the grievance of the country, it may be inquired of before the justices of assize, but not before the lord of the leet. It has been held that one tenant in common may support trespass against the other for destroying old doves in a dove cote (*r*).

2nd. Statutes. There are some statutes for the preservation of pigeons. Two Statutes, one of the 18 Rich. and the other of the 14 Edw. 1. have been cited as having been passed to prevent the destroying

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(*p*) Cro. Car. 387. post,  
Appendix, 928.  
(*q*) Cro. Jac. 491.

(*r*) Year Book, 47 Ed. 3.  
p. 32. post, Appendix, 722.

of pigeons with engines (*s*). The 2 Jac. 1. III. PIGEONS.  
 c. 27. s. 2. (*t*) enacts, " That every person and  
 " persons who shall shoot at, kill, or destroy,  
 " with any gun, cross bow, stone bow, or long  
 " bow, any house dove or pidgeon, or shall take,  
 " kill, or destroy the same with any manner of  
 " nets, snares, engines, or instruments, the party  
 " offending, being convicted by his confession  
 " or by two witnesses before two justices of the  
 " peace, he shall forfeit 20*s*. for each house dove  
 " or pigeon, or be committed to the county gaol  
 " for three months." The 4 and 5 W. & M.  
 c. 23. s. 3. (*u*) enacts, " That a constable may,  
 " by the warrant of a justice of peace, search  
 " the house, outhouse, or place, belonging to  
 " a suspected person, not qualified, and if any  
 " pigeon shall be found the offender shall be  
 " carried before a justice of the peace, and if he  
 " do not give a good account how he came by  
 " the same, or prove that he bought it, he shall  
 " be convicted and forfeit not less than 5*s*. nor  
 " more than 20*s*., half to the informer and half  
 " to the poor of the parish." The Statute 2 Geo.  
 3. c. 29. (*x*) reciting that the provisions of the  
 Stat. of James have been found in a great degree  
 ineffectual, enacts, " That if any person or per-  
 " sons, not being the owner, shall shoot at with an  
 " intent to kill, or shall by any means whatever  
 " kill or take, with a wilful intent to destroy, any

(*s*) Pratt v. Sterne, 1 Roll.  
 Rep. 200. post, Appendix,  
 387.

(*t*) Post, Appendix, 421.  
 (*u*) Post, Appendix, 460.  
 (*x*) Post, Appendix, 606.



III. PIGEONS. "house dove or pigeon, and shall be convicted  
 "by his confession or one witness, before one  
 "justice of the peace, he shall forfeit 20s., and  
 "in default of payment be committed to the  
 "house of correction for not less than one or  
 "more than three calendar months, there to be  
 "kept to hard labour."

It is observable that though Mr. Justice Doderidge, in the above-mentioned case (*y*), said, "That if pigeons come upon my land, I may kill them, and the owner hath not any remedy," he cautioned such owner to take heed that he took them not by any means prohibited by the statutes; therefore since the last-mentioned statute, prohibiting "The killing by any means whatever," it is not lawful for any one but the owner of the pigeons to kill them. These statutes only relate to the killing or taking of pigeons whilst at large, if young ones be taken feloniously before they can fly, or old ones when shut up, an indictment may be supported at common law (*z*).

For pigeons consumed in the house of the owner tithes are not payable of common right, but if the owner sell his young pigeons tithe is due, and in the first case by custom tithe may be claimable (*a*).

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(*y*) *Dewell v. Sanders*, H. 14. 16.—*Jones v. Gas-*  
*Cro. Jac.* 492. *tril*, 2 *Rol. Rep.* 2.—*Post*,

(*z*) *Ante*, 136. 2 *East. Pl.* Appendix, 900.—*Badgerly*  
*Cr.* 607.—4 *Bla. Com.* 235. *v. Wood*, 12 *Mod.* 47. *post*,

(*a*) *Com. Dig. tit. Dismes*, Appendix, 977.

## CHAPTER VII.

OF THE POWERS OF FORESTERS, PARK KEEPERS, JUSTICES OF THE PEACE, LORDS OF MANORS, GAME KEEPERS, AND OTHER PERSONS, TO SEIZE OFFENDERS AGAINST THE GAME LAWS, THEIR DOGS, AND ENGINES, AND GAME, WHICH SHALL BE FOUND IN THEIR POSSESSION.

BY the policy of the common law and by the express provision of the Charta de Foresta, no person could be taken or imprisoned upon suspicion of his having offended against the game laws, unless the suspicion was sanctioned by the finding of a Jury, on presentment or indictment. This was established in the case of the King v. Machin and others (*a*), in which it appeared that the defendant had been taken into custody by Lord Lovelace, Chief Justice in Eyre, by warrant to bring him before him wherever he should be, charged upon oath for killing deer and cutting down young trees, some of them being found in one of their yards; and Pemberton, Sergeant, moved for their discharge, upon the ground that no warrant can be granted upon oath; but upon a presentment of the verderors

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(*a*) 1 Shower. 54. post, Appendix, 971.

an attachment lies. And the Court said, he might be apprehended if taken in the mainour, it is but an encroachment on the common law for justices of the peace to grant warrants before presentment or indictment. The court of attachments is in being, though the swainmote is not. The words of the statute are general, "No man shall be taken or imprisoned," it is a general law. As to the mainour he must be taken in it, the Chief Justice cannot send to take in the mainour, for the mainour must be at the time when the thing was done or committed; for if the goods were found about him afterwards, that is not taking in the mainour, for he might buy them, or another leave them there." And therefore the warrant was ruled to be void, and the defendants were discharged by the Court.

But as offenders against the game laws would escape and go unpunished unless summary modes were provided, either for their apprehension or the seizing of the instruments for the destruction of game in their possession (*b*), we find a great variety of powers vested in different cases, in park keepers, justices of the peace, lords of manors, game keepers, and others, authorizing them to interfere in a summary manner, in order to prevent the destruction of game. We will consider the statutes and decisions upon this subject.

The most ancient provisions which gives summary powers to persons to interfere in adopt-

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(*b*) 1 East. Pl. Cr. 302.—4 Bla. Com. 180.

ing measures for the preservation of game, by seizing the offender, or the instruments he makes use of, relate to the *owners* of forests, parks, and warrens, and to *foresters*, park-keepers, and warreners. By the Statute of Merton (*c*), we find that the lords in parliament petitioned, that it might be enacted that they might imprison persons whom they took trespassing in their parks and ponds in their own prisons; but this, as Lord Coke observes, being contrary to Magna Charta, was refused (*d*). The Statute de Malefactoribus in parcis (*e*), (to which it may be observed the 4 and 5 W. & M. c. 23. s. 4. seems to refer,) enacts, "That any forester, parker, or warrener, who, in case of any trespassers resisting, or not yielding, shall kill any offender either in arresting or taking him, shall not be punished unless he acted maliciously."

1. Power of foresters, park-keepers, &c. to seize offenders, &c.

The 16 Geo. 3. c. 30. s. 9. (*f*), and the 42 Geo. 3. c. 107. (*g*), enacts, "That if any person armed shall enter any forest, or other place, where deer are usually kept, whether enclosed or not, with intent to take *deer*, the ranger or keeper may seize and take from such person, for the use of the owner of the forest, &c. all guns, and other engines, and dogs there brought for coursing deer, in the same and like manner as the game-keepers of manors are empowered to

(*c*) 20 Hen. 3. c. 11. post, Appendix, 359.

post, Appendix, 357.

(*d*) 2 Inst. 100.

(*e*) 21 Edw. 1. St. 2.

(*f*) Post, Appendix, 646.

(*g*) Post, Appendix, 667.



1. Power of  
foresters,  
park-keepers,  
&c. to seize  
offenders, &c.

do; and if any person shall beat or wound such ranger or keeper, or his servants or assistants, in the execution of their office, or shall attempt to rescue any offender, he shall be guilty of felony, and transported for seven years." And the 15th section authorizes the keeper, or under keeper, of any forest, chase, purlieu, ancient walk, paddock, park, or other ground enclosed, where deer are usually kept, and their servants or assistants, to seize and apprehend upon the spot, any person whom they shall discover in the actual fact of hunting, coursing, killing, wounding, shooting at, taking, destroying, or carrying away, any red or fallow deer from any such forest, &c., or in setting or laying any net or other engine for the taking of deer, and to carry the offender before a justice of the peace.

In Wormall's case (*h*), where the servant of the keeper of Hyde-park assaulted the defendants first, and willed them to stand, and they fled, and one of the keeper's men discharged a piece at them, and yet they fled, until one of the keeper's men did hurt one of the defendants, and then they turned back and killed one of the keepers; this was held murder in all the defendants; for they ought not to have fled, but yielded themselves to the keepers when they were required by them so to do. Sir Henry Mountague, Ch. J. however, said, "that although the law so privilegeth park keepers, that the keeper may justify the killing any one who comes to disturb

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(*h*) 2 Roll. Rep. 120. post, Appendix, 907.

the game by hunting, killing, &c. yet, if, from the private malice he bears to any one who comes into the park without any intention of hunting, he kills him, this is murder in the keeper." Hence it may be collected that the ranger or keeper of a legal forest, park, chase, or warren, may lawfully shoot at an offender who attempts to fly. But, as observed by Sir Wm. Blackstone (*i*), in these cases there must be an apparent necessity on the officer's side, viz. that the deer stealers would otherwise escape, otherwise, without such absolute necessity, it is not justifiable.

1. Power of foresters, park-keepers, &c. to seize offenders, &c.

A park keeper may lawfully take and kill a greyhound which has chased a deer in his park, to prevent more mischief (*k*); and the warrener of a person seised of a warren, may justify the killing of a dog which has been used to infest the warren, whilst he is running after rabbits; for, having used to haunt the warren, he cannot otherwise be restrained. And Popham, J. said, "The common use of England is to kill dogs and cats in all warrens, as well as any vermin, which shews that the law hath been always taken to be that they may kill them (*l*)." And in these cases it seems that it is not necessary to allege in pleading, or to prove that the park keeper, or

(*i*) 4 Bla. Com. 180. vid. et 1 East. Pl. Cr. 302.

(*k*) Barrington v. Turner, 3 Leving. 28. post, Appendix, 964.

(*l*) Wadhurst v. Damme,

Cro. Jac. 45. post, Appendix, 850. See also the observation of Le Blanc, J. in Vere v. Lord Cawdor, 11 East, 568. post, Appendix, 1364.

1. Power of  
foresters,  
park-keepers,  
&c. to seize  
offenders, &c.

warrener, could not otherwise prevent the dog from killing the deer, or the rabbits, but it is sufficient to state that the dog was in the park, or warren, pursuing the deer or rabbits there, and that therefore he killed him (*m*).

It has been held, that if a person have land adjoining a forest, and be bound by prescription to fence against it, but neglect to do so, and, in consequence, the deer escape from the forest into his land, the forester cannot legally enter the same in order to drive back the deer, because his property in the deer ceased when they escaped out of the forest; and these animals are not like tame cattle in which the property continues and the owner may lawfully enter to retake them when they have escaped through defect of fences (*n*). But if the owner of the adjacent ground break down the fence, or enter the park, or forest, and drive out the deer, then the property in the deer will not be divested, and the forester, or park keeper may make fresh suit after the same (*o*). In *Millen v. Fawdrey* (*p*), *Crow*, Ch. J. said, "that if deer come into my land, out of the forest, and I with my dogs chase them, it is a sufficient excuse for me to wind my horn to recall the dogs, because by this the

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(*m*) *Wright v. Ramscot*,  
1 *Saund.* 84. and note s.  
post, *Appendix*, 938. and  
the observation of *Le Blanc*,  
J. post, *Appendix*, 1364.

(*n*) *Keilway's Rep.* 30

post, *Appendix*, 794.

(*o*) *Year Book*, 12 *Hen.*  
8. p. 9. post, *Appendix*,  
805.

(*p*) *Latch*, 120. post,  
*Appendix*, 924.

keeper of the forest has notice that a deer is in chase."

The 7 J. 1. c. 11. s. 9. (*q*) authorizes "every constable and headborough, by a warrant from two justices, to search the houses of any person not thereby qualified to take pheasants and partridges with nets, as therein mentioned, and being suspected to have any setting dogs, or nets, for the taking of pheasants and partridges; and wheresoever they shall find the same, to take, carry away, and detain, kill and destroy, and cut in pieces, as things prohibited by this act, and forfeited to such of the said officers as shall find out and take the same."

2. Justices of peace, and persons under them.

The 22 and 23 C. 2. c. 25. s. 2. (*r*) enacts, "That any gamekeeper, or other person, being thereunto authorized by warrant under the hand and seal of a justice of the peace, may in the day-time search the houses, outhouses, or other places, of any person by that act prohibited from keeping or using the same, as upon good ground shall be suspected to have or keep in his custody any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, or other dogs, to destroy hares or conies, hayes, tramels, or other nets, lowbels, hare pipes, snares, or other engines, for the taking and killing of conies, hares, pheasants, partridges, or other game, and the same to seize, detain, and keep to and for the use of the lord of the manor or royalty where the same shall be so

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(*q*) Post, Appendix, 436.

(*r*) Post, Appendix, 416.



2. Justices of peace, and persons under them, found or taken, or otherwise to cut in pieces or destroy, as things by this act prohibited to be kept by persons of their degree."

By the 4 and 5 W. & M. c. 23. (*s*) it is enacted, "That every constable, headborough, and tythingman, being thereunto authorized by warrant of a justice of the peace, may enter and search the house of any unqualified person; and in case any hare, partridge, pheasant, pidgeon, fish, fowl, or other game, shall upon such search or otherwise be found, the offender shall be carried before some justice of the peace, to be dealt with as therein mentioned."

The 5 Ann. c. 14. s. 4. (*t*) enacts, "That it shall be lawful for any justice of peace, and the lords and ladies within their manors, to take away any hare, pheasant, partridge, moor, heath game, or grouse, or any other game, from any higlar, chapman, innkeeper, victualler, carrier, or any other person not qualified to kill the same, and to take away any greyhounds, setting dogs, lurchers, nets, or other engines, which shall be in the power or custody of any person or persons not qualified by the laws to keep the same, to their own proper use, without being accountable to any person for the same."

The 9 Ann. c. 25. s. 4. (*u*) enacts, "That the justice of the peace before whom a person shall be convicted of taking wild fowl at an improper season of the year, shall order the hayes,

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(*s*) Post, Appendix, 460. See also 10 Geo. 2. c. 32.

(*t*) Post, Appendix, 479. s. 10. post, Appendix, 531.

(*u*) Post, Appendix, 484.

nets, or tunnels, that were used in driving and taking the said wild fowl, to be seized and immediately destroyed in the presence of such justice." 2. Justices of peace, and persons under them.

The 9 Geo. 1. c. 22. (*x*) contains provisions as to the apprehending offenders, and protecting persons in the attempt to seize them, but as this statute is considered as virtually repealed in its principal provisions relating to game, I shall not here make any further observations upon it.

The 16 Geo. 3. c. 30. s. 4. & 6. (*y*), and 42 Geo. 3. c. 107. (*z*) authorize a justice of the peace to grant a search-warrant for deer, but this provision is considered more fully in the chapter which relates to deer.

It has been held (*a*) that under the Statute of Justices. 5 Ann. a justice of the peace, without any previous conviction of the offender, may justify the taking away a gun used by an unqualified person, the same as lords of manors; but we have seen (*b*) that a justice cannot legally seize the gun of a game-keeper, though he be not within the precincts of his own manor. It appears, from the case of *Briggs v. Sir Frederick Evelyn* (*c*), that a justice of the peace cannot himself enter a house for the purpose of searching for and seizing a gun, or other engine, but can only grant his warrant to another. It was argued that the Sta-

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(*x*) Post, Appendix, 514. dix, 1055.

(*y*) Post, Appendix, 643. (*b*) Ante, 50, 1 post, Appendix, 1148.

(*z*) Id. 667.

(*a*) *Devenish v. Mertins*, (*c*) Hen. Bla. 114. post, 7 Mod. 215. post, Appendix, 1231.

Justices.

tutes 22 and 23 C. 2. c. 25. and 4 and 5 W. 3. c. 23. are the only acts which authorize the entering and searching houses for game, and engines for its destruction. The first of these requires that there shall be a warrant from a justice of peace to the game-keeper, to authorize the search; the second empowers the constable to enter and search, having a similar authority from a justice: but neither of them empowers the justice himself personally to enter. The Stat. 5 Ann. c. 14. indeed authorizes a justice of the peace to take away dogs, nets, or other engines from unqualified persons, but gives him no authority to enter houses; and that act purposely omits guns which must be used for the destruction of game, otherwise they are not liable to be seized. The Court appear to have admitted the force of this argument; but they held that the action could not be sustained in that case, because no notice of action had been served upon him as a justice of the peace, in pursuance of the 24 Geo. 2. c. 44. and they held that the lord of a manor, who is also a justice of the peace, is entitled to a month's notice of an action intended to be brought against him, for taking away the gun of an unqualified person in the manner before mentioned. It should seem, from the case of the *King v. Birt (d)*, that under a search-warrant a gamekeeper, or other person,

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(d) 2 Keble, 530. post, Appendix, 946.

can only enter when the house is open, and cannot legally break open an outer door.

We have already considered the appointment and powers of a *gamekeeper*, as far as relates to his authority *to kill game*. The object of his appointment originally was merely to preserve it, and the first statute upon this subject, which vests any peculiar powers in the lord of a manor, or his gamekeeper, is the 22 and 23 C. 2. c. 25. s. 2. (e), by which it is enacted, “That all lords of manors, or other royalties, (not under the degree of an esquire,) may, by writing, under their hands and seals, authorize one or more (f) gamekeeper or gamekeepers within their respective manors or royalties, who being thereunto so authorized, may take and seize all such guns, bows, greyhounds, setting dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbels, hayes, or other nets, hare pipes, snares, or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of such respective manors shall be used by any person or persons who, by this act, are prohibited to keep or use the same.”

3. Lords of manors, and their gamekeepers.

The 4 and 5 W. & M. c. 23. s. 4. (g), enacts, “That to the end all keepers and gamekeepers, mentioned in and duly authorized ac-

(e) Post, Appendix, 445, 6.

(f) We have seen that a lord of a manor can only appoint one gamekeeper in a

manor *to kill game*, but he may appoint *any number to preserve it*.

(g) Post, Appendix, 461.



3. Lords of manors, and their gamekeepers.

According to the Statute 22 and 23 C. 2. c. 25. may be indemnified in the execution of the said office, be enacted that all lords of manors and other royalties, or any person or persons authorized by them as gamekeepers, shall and may, within their respective manors or royalties, oppose and resist such offender in the night-time in the same manner, and be equally indemnified for so doing, as if such fact had been committed within any ancient chase, park, or warren, enclosed, whatsoever (*h*).

The power which we have seen is given to justices of the peace by the 5 Ann.c.14. as to taking away game and dogs and engines for the destruction of game from the possession of unqualified persons, extends also to lords and ladies of manors.

Under the Statute of Charles the Second, the gamekeeper is authorized to seize guns, dogs, &c. used by unqualified persons within his manor, but we have seen that he cannot legally seize the gun of another gamekeeper, duly appointed, though trespassing out of his proper manor. Lord Mansfield said, “ By the Statute of Charles, gamekeepers themselves are empowered to seize guns; what! shall a gamekeeper in the very next manor to mine, have a power to take my gamekeeper’s gun, if he happen to be trespassing in my neighbour’s manor? this would be a humiliating disgrace indeed, and could never be meant by the legislature; and if gamekeepers were permitted to seize one another’s guns, there

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(*h*) As to this power, see *pendix*, 359.  
21 Edw. 1. St. 2. post, Ap-

would be a kind of border war among them. If <sup>3</sup> Lords of this was a doubtful case, we should incline to the <sup>manors, and their game-keepers.</sup> same opinion we are of to prevent breaches of the peace; but it is a clear case, and the game-keeper is neither within the words or meaning of the Stat. 5 Ann. c. 14. s. 4. The acts of parliament come from the lords of manors themselves, who most commonly furnish their game-keepers with dogs, guns, nets, &c.; we cannot think their property was intended to be put in the power of their gamekeepers, to forfeit the same, whenever they might please to exceed their authority under the deputations. Upon the whole, we are all of opinion, that the gun of a game-keeper of a manor cannot be seized either *caudo* or *redeundo*, or any where else, and that the defendant, the justice of peace, had no right to take away the plaintiff's gun from him."

If a gamekeeper be uncertain of the qualification of a person whom he finds sporting on his manor, it would be imprudent to incur the risk of an action of trespass by seizing the gun of his own accord, but he should obtain a warrant from a justice of peace, in which case, unless he acted maliciously he would not be liable to an action, though it should turn out that the person was qualified (*i*).

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(*i*) *Carpenter v. Adams*, Comberback, 183. post, Appendix, 972. There appears a doubt to have arisen, from the imperfect report of this case, whether the defendant took the gun from the house of the owner, and whether it is not necessary for a game-keeper in all cases to have a warrant to seize a gun, though the unqualified person be using it. But it appears clear, from the first part of

3. Lords of manors, and their gamekeepers.

Nor can a gamekeeper legally seize a gun, unless the unqualified person be at the time using it for the destruction of game (*k*). Neither can he kill the dog of a person following game within the boundaries of the manor, unless it be actually used at the time by an unqualified person for the purpose of destroying game; for the power of a gamekeeper is very distinguishable from that of a park-keeper or warrener, who, we have seen, may destroy or kill any dog whilst pursuing deer or rabbits (*l*). In *Roy v. Duke of Beaufort* (*m*), the Lord Chancellor observed, "That a gamekeeper might lawfully seize the dog of an unqualified person, and that though the gamekeeper shot him, that does not make any great alteration; because if any body has suffered, it is the lord of the manor, who lost the benefit of the dog which should have been secured for his use.

The Statutes do not seem to give any power to the lord of a manor or his gamekeeper in the day-time to seize the unqualified person himself, but merely empower them to seize the dogs and engines (*n*), though they have that authority in

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the second section of the Statute of C. 2. post, Appendix, 446. that a gamekeeper has this power by virtue of his appointment to that office, and that a warrant is only necessary to search in a house, &c. See also Lord Hardwicke's observation, post, Appendix, 1081.

(*k*) *Wingfield v. Stratford*, 1 Wilson. 315. post, Appen-

dix, 1104. See also Appendix, 1071.

(*l*) *Vere v. Lord Cawdor* and another, 11 East, 568. post, Appendix, 1363. See also *Athel v. Corbet*, Cro. Jac. 463. post, Appendix, 899.

(*m*) 2 Atk. 190. post, Appendix, 1081.

(*n*) 22 & 23 C. 2. c. 25. s. 2. post, Appendix, 446.



the night-time (*o*). Therefore the observation of Lord Hardwicke, Chancellor, in *Roy v. the Duke of Beaufort* (*p*), "That the carrying the gun and shooting the keeper's dog in return for his own being killed, was a sufficient justification of the keeper for taking the party before a justice of peace," must be construed as a taking by virtue of a warrant.

We have seen that, by the second section of the 22 and 23 C. 2. c. 25. it is enacted, "That the said gamekeeper or gamekeepers, or any other person being thereunto authorized, by a warrant of a justice of the peace, may, in the day-time *search the houses, &c.*," under this clause it seems that a justice's warrant is necessary, as well for a gamekeeper as for any other person. In *Burn's Justice* (*q*), it is said "It is at least safe to have such warrant, especially if any houses are to be entered and searched. For it would give too great a power to the gamekeepers to leave it in their discretion to search what places they may think proper, as also to constitute them the judges, whether a person is or is not qualified to kill game. Therefore it is best to have a warrant from a justice of the peace, after information and oath of the offence first made."

The Stat. 22 Edw. 4. c. 6. (*r*) enacts, "That

4. Powers of other persons to interfere.

(*o*) 4 & 5 W. & M. 2. 23. *vid. et Carpenter v. Adams*  
*s. 4. post, Appendix, 461. Comber, 183. post, Appen-*  
*(p)* 2 Atk. 190. *post, Appendix, 972.*  
*pendix, 1081.*  
*(q)* *Tit. Game, 2 vol. 437.*  
*(r)* *Post, Appendix, 374, 5.*



4. Powers of other persons to interfere. if any person not qualified as therein mentioned, that is, not having a freehold estate of five marks per ann. shall have or possess any mark or game of swans, it shall be lawful for any of the king's subjects, having lands or tenements to that value, to seize the said swans as forfeit, whereof the king shall have one half, and he that shall so seize, the other half.

By the 23 H. 8. c. 6. (s), which regulates the length of guns, and the amount of qualification, persons qualified as therein mentioned, are authorized to seize and take crossbows or hand-guns made of different dimensions.

The 3 James 1. c. 13. s. 5. (t) enacts, "That if any person, not qualified as therein mentioned, shall use any gun, bow, or crossbow, to kill any deer or conies, or shall keep any buck-stalls, or engine-hayes, gate-nets, purse-nets, ferrets, or coney-dogs, then any person having an estate of freehold in his own right, or in right of his wife of one hundred pounds a year, may take from the person or possession of such malefactor, and to his own use for ever keep the said instruments.

The 39 and 40 Geo. 3. c. 50. s. 1. (u) enacts, "That if any persons, to the number of two or more, shall enter any forest, chase, park, wood, plantation, paddock, field, meadow, or other open or enclosed ground *in the night*, as therein mentioned, having any instrument to take or kill game, or if any person or persons should be

(s) Post, Appendix, 391.

(u) Post, Appendix, 664.

(t) Post, Appendix, 430. 5.

found armed, aiding and assisting such persons, it shall be lawful for any person to seize and apprehend them, and to deliver them to a peace officer, who is to carry them before a justice of the peace.

4. Powers of  
other persons  
to interfere.

The 48 Geo. 3. c. 55. s. 10. (x) relating to game certificates, authorizes any commissioner, assessor, or collector of taxes within his district, and the lord of a manor and his gamekeeper within it, and the inspector or surveyor of taxes, and any person duly assessed to the duties imposed by this act, and the owner, landlord, lessee or occupier of the land, upon which any person should be found using any dog, gun, or net, or other engine in Great Britain, for any of the purposes mentioned in the schedule, to demand and require from such person, the production of a certificate issued to him for that purpose, which he is directed by the act to produce, and to permit it to be read by the person demanding the same, and to take a copy of it. And, in case of refusal, the party demanding is to state his christian and surname, and place of residence, and the parish and place in which he shall have been assessed; upon which, if the party shall wilfully refuse to produce and shew such certificate, or to give in his name and place of residence, and the parish where he is assessed, or shall give in a fictitious name, place of residence, or place of assessment, he shall forfeit and pay 20*l.* to be recovered as therein mentioned.

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(x) Post, Appendix, 685.

4. Powers of  
other persons  
to interfere.

It must be observed that these several statutes are of a limited nature, and do not give to qualified persons or others who are the owners of land those extensive powers, which we have seen are by other acts vested in justices, lords of manors, and gamekeepers. The owner of land cannot therefore seize a dog which is coursing a hare (*y*), and on this ground it was held that a plea of justification by a gamekeeper for seizing a gun, was bad, because it did not state by whom he was appointed (*z*); and a fortiori, a private person cannot legally shoot a dog trespassing on his lands in pursuit of game (*a*). If however game be started and killed by one on his land, if it be not within the precincts of a forest, chase, or free warren, he may on account of his local property seize it for his own use if qualified (*b*), or for the use of the lord of the manor if unqualified (*c*). But if the game be not started on his land, though it be killed there, he has no power to seize, but it vests in the person who killed it (*d*).

The occupier may require any person sporting on his land to go off, and if the intruder be guilty of any violent battery, the Court of King's

(*y*) *Athel v. Corbet*, Cro. Lord Raym. 250. post, Appendix, 984 & 1002.  
Jac. 463. Post, Appendix, 899.

(*z*) *Carpenter v. Adams*, 10 East. 19. post, appendix, 1344.  
Comberbach, 183. post, Appendix, 972.

(*a*) *Vere v. Lord Camden*, 11 East. 568. post, Appendix, 1363.  
(*d*) 2 Bla. Com. 419. n. 1 p. and *Sutton v. Moody*, 1 Lord Raym. 250. post, Appendix, 984 & 1002.

(*b*) *Sutton v. Moody*, 1

Bench has under particular circumstances interfered in a summary manner, and granted a criminal information (*e*). 4. Powers of other persons to interfere.

There is no reported decision on the Statute 48 Geo. 3. c. 55. but the cases under the former acts may be applicable to it, and upon the repealed Stat. of 25 Geo. 3. c. 50. s. 15. it has been held that in order to complete the offence of not producing a certificate, the party demanding it must also require the person to give his name and place of abode, and it was also held, that a person merely assisting another who was qualified and had a certificate, is not bound either to produce a certificate, or give his name (*f*).

Besides these legislative provisions, authorizing persons not invested with any particular character to interfere in the preservation of game, it has been held lawful for any one to take a bond or covenant against another's sporting. In *Roy v. the Duke of Beaufort* (*g*), Lord Hardwicke said, "Bonds taken for the preservation of the game and to prevent poaching, are not only for the benefit of lords of manors, but even of the young persons who enter into them, as this sort of idleness generally leads them to worse consequences. Though there is no act of parliament which directs taking bonds in this particular

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(*e*) *Jenning v. Mott*, Bar. dix, 1322.

Hardist. Rep. 16. post, Appendix, 1051.

(*f*) *Molton v. Rogers*, 4 Esp. Rep. 215. post, Appen-  
 (*g*) 2 Atk. 190. post, Appendix, 1082. See also *Bird v. West*, Sir T. Jones, 21. post, Appendix, 948.



4. Powers of case, yet there are statutes which approve of it  
other persons in similar cases; as for instance the acts that re-  
to interfere. late to the customs expressly direct and com-  
mand such bonds to be taken to prevent and  
guard against offences for the future. The act  
likewise against deer-stealing commands such  
bonds to be taken, and though there is no au-  
thority in the present case, yet it shews the  
doing of it is not *malum in se*. The counsel for  
the plaintiff having insisted it is an excessive pe-  
nalty, and to be sure it is a large one, but I do  
not know that courts of equity where a bond is  
entered into voluntarily, have gone so far as to  
take into their consideration the greatness or  
smallness of the penalty. I shall be extremely  
cautious how I give an opinion that will set  
aside such bonds, which, if rightly used, may  
be of great service in the preservation of the  
game, and an equal benefit to the obligors  
themselves, in taking them out of an idle course  
of life which poaching naturally leads them  
into. As to the head of security, it is most ab-  
surd to think that bonds of this kind were in-  
tended merely as a security, and that nothing is  
to be recovered upon them. I am of opinion  
when these sort of bonds are given by way of  
stated damages between the parties, it is unrea-  
sonable to imagine they could only be intended  
as a bare security that the obligor should not  
offend in future; was this the case, in what re-  
spect is a gentleman in a better condition who  
has such a bond than he was before, if after he

has obtained judgment at law, a court of equity will give him no other satisfaction than the bare value of the price of the game that is killed?"

4. Powers of other persons to interfere.

But if there be any attempt to make an unjust use of such a bond, a court of equity will interfere to prevent the plaintiff from recovering at law; and therefore in the last mentioned case, where the defendant had recovered 100*l.* the penal of the bond, and 40*l.* costs, merely for a trifling breach of the condition, committed under particular circumstances, Lord Hardwicke decreed that the plaintiff in equity should be relieved against the verdict, and that the defendant should refund the 100*l.* recovered on the bond, and the 40*l.* costs, but without costs in equity on either side.

If in a lease the lessor reserve to himself a pond or the game generally, he will be entitled to have all the fish and the game, and it will be lawful for him to enter for the purpose of taking it (*h*). And though a court of equity might relieve against a forfeiture for a single violation of a covenant not to sport, and a clause of re-entry reserved thereon, it would be otherwise if the tenant were obstinately to persist in such infraction of his contract.

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(*h*) Year Book, 14 Hen. 8. p. 1. post, Appendix, 811. See the form of a covenant to preserve game, and of the landlord's covenant to indemnify against costs of actions brought by the tenant against third persons, and of proviso of re-entry, post, Appendix.

## CHAPTER VIII.

OF THE PUNISHMENTS OF CRIMES RELATING TO GAME, AND THE MODES OF ENFORCING THE PAYMENT OF PECUNIARY PENALTIES, BY ACTIONS, INFORMATION IN THE CROWN OFFICE, OR INFORMATION BEFORE JUSTICES OF THE PEACE, AND COURSE OF PROCEEDING.

HAVING in the preceding chapters considered the property in game, the prohibitions against destroying it, and the summary modes of interfering for its preservation, we will in this chapter inquire into the means by which offenders may be punished for their infraction of the laws relating to game, which subject may be classed under two heads:—1st, Of those offences which are punishable *criminally*, and the course of proceeding. 2dly, Of those offences which are punishable in the first instance by *pecuniary penalty*, and the course of proceedings.

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I. OF OFFENCES PUNISHABLE CRIMINALLY, AND COURSE OF PROCEEDING.

1. CRIMINAL  
PROCEEDINGS.  
FIRST, INDICT-

IN treating of the *property* in game, we have frequently had occasion to observe, that at *common*

law, &c. independently of any legislative provision, there is not in general a sufficient property in game in any individual, or even in the king, to support *an indictment or criminal prosecution* against a person for taking it, and that the punishment on offenders must be looked for only in those express legislative provisions that have been introduced for protection of game. It is a common doctrine established by many decisions and the opinions of the best elementary writers, that larceny cannot at common law be committed of animals *feræ naturæ*, and unreclaimed, as deer, hares, rabbits, &c. though in a forest, chase, or warren, nor of old pigeons out of the house, or wild fowls, at their natural liberty, although a person may have an exclusive right, *ratione loci aut-privilegii* to take them, if he can, in those places (*a*). Thus we find in the Year Books (*b*), that it was always holden that the taking of old pigeons at large, or of fish in an open river, or of a hare or pheasant, unless reclaimed, and so known to be by the party stealing them, is not a felony. On this ground it was held in a modern case (*c*), that an indictment for stealing a pheasant generally of the goods and chattels of H. S. is bad, for, by all the judges, in cases of larceny of animals *feræ naturæ*, the indictment must shew that they were

MENT AT COM-  
MON LAW.

(*a*) 2 East. Pl. Cr. 607.

(*b*) 18 Edw. 3. p. 8. post, Appendix, 772. and Jenkins, 5th Century, 204. post, Appendix, 812.—Year Book,

19 Hen. 8. p. 2. post, Appendix, 812. and 840. 3.

(*c*) The King v. Rough, 2 East. Pl. Cr. 607. post, Appendix, 1176.



Y. CRIMINAL  
PROCEEDINGS.  
FIRST, INDICT-  
MENT AT COM-  
MON LAW.

either dead, tame, or confined, otherwise they must be presumed to be in their original state; and it is not sufficient to add of the goods and chattels of such an one. So in another case (*d*), for stealing fish out of a certain pond used for keeping fish, though the court held the indictment good upon the statute, yet they said if the indictment had been at common law for a felony, it should have described what sort of a pond it was, that it might appear on the face of the indictment, that the taking fish out of such a pond was felony. And in another case (*e*), it was held the felony cannot be committed at common law by taking oysters off oyster lays in an arm of the sea, though not produced there, but brought there for sale.

But if animals *feræ naturæ*, are dead, or reclaimed and known to be so, or confined and may serve for food, it is indictable even at common law, to steal them. For larceny may be committed of deer so enclosed in a park that they may be taken at pleasure; fish in a trunk or net, or, as it should seem, in any other enclosed place which is private property, and where they may be taken at the pleasure of the owner at any time; or of pheasants or partridges in a mew; young pigeons, or old ones when shut up; young hawks in a nest or even old ones or falcons re-

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(*d*), Hudson's case, 2 East. 1324. This offence is since by Pl. Cr. 611. post, Appendix, 48 Geo. 3. c. 144. declared to be felony, post Appendix, 1177.

(*e*), Rex v. Walford. 5 Esp. 693.

Rep. 62. post, Appendix,

claimed, and known by the party to be so. So of peacocks and swans marked or pinioned, or swans unmarked if tame, kept in a moat, pond or private river; but if they range out of the royalty it is no felony to take them, though marked, because it cannot be known that they belong to any person. Nor can larceny be committed of the eggs of these, or of hawks, because the Stat. 11 Hen. 7. c. 17. has appointed a less punishment, namely, fine and imprisonment (*f*). This doctrine we find established in the Year Books, (*g*) as far as relates to the taking of young pigeons, or young hawks, or of fish in a pond.

I. CRIMINAL  
PROCEEDINGS.  
FIRST, INDICT-  
MENT AT COM-  
MON LAW.

And though for some purposes several persons, by associating in the commission of an illegal act, may become indictable for a conspiracy; yet several persons cannot be indicted at common law for conspiring to destroy game; and therefore in a late case (*h*) it was held, that an indictment will not lie for conspiring to commit a civil trespass upon property, by agreeing to go into a preserve, the property of another, for the purpose of snaring hares, though alleged to be done in the night, by the defendants, armed with offensive weapons for the purpose of resisting any endeavours to apprehend or obstruct them.

(*f*) 2 East. Pl. Cr. 607.

(*g*) 18 Edw. 3. p. 8. post, Appendix, 772. and Jenkins, 5th Century, 204. post, Appendix, 812.—Year Book, 19 Hen. 8. p. 2. post, Ap-

pendix, 812. 840. 3. 1063.

(*h*) The King v. Turner and others, 13 East. 228. post, Appendix, 1372. — King v. Marshall, 2 Keble. 594. post, Appendix, 947.

INDICTMENT  
ON STATUTES.

We have already considered the instances in which the infraction of the game laws is punishable criminally by the different *statutes*, which usually at the same time point out the proper course of proceeding, and it is sufficient to refer the reader to the preceding pages (*i*). It may here suffice to observe, that when the statutes point out a particular remedy, and the offence was not before punishable as a crime at common law, the particular course of proceeding directed by the statute must be pursued. Thus no indictment lies for killing a hare or for having nets in possession, this not being criminal at common law and punishable only in a particular manner by the statutes (*k*). So an indictment against several for fishing in the night with nets, not being framed according to the Stat. 5 Eliz. c. 21. was held not sustainable at common law (*l*). But if several in attempting to sport, be guilty of a riot or a forcible entry, they may without reference to the game laws, be indicted for such breach of the peace (*m*). So at common law, if wild fowl or fish be ingrossed with intent to raise the price, or otherwise to prejudice the public, the party may be prosecuted,

(*i*) See also some of the criminal proceedings on the statutes enumerated, 2 East. Pl. Cr. 607 to 614.

(*k*) Rex v. Buck, 2 Strange, 679. post, Appendix, 1047.—The King v. Towning and others. Andrews, 303. Post, Appendix, 1077. 990.

(*l*) The King v. Marshall,

2 Keble, 594. post, Appendix, 547.

(*m*) The King v. Birt, 2 Keble, 530. post Appendix, 946.—The King v. Wharton, 12 Mod. 510. post, Appendix, 990.—The Mayor, &c. of York v. Sir Lionel Pilkington, 9 Mod. 273. post, Appendix, 1089.

and in the indictment it must be shewn what quantity of fowl or fish in particular have been engrossed (*n*). Where a statute prohibits an offence under the game laws without pointing out the mode of enforcing the punishment, the only course of proceeding is by indictment (*o*).

INDICTMENT  
ON STATUTES.

A proceeding by quo warranto, or an information in the nature of it, which is a remedy given to the crown against such as have usurped or intruded into a franchise, or abused the use of it (*p*), may be classed under the head of criminal prosecutions, though the fine is now merely nominal, and the proceeding is in some respects of a civil nature (*q*). This is a proceeding in the nature of a writ of right for the king, against a person who usurps or claims any franchises or liberties, requiring him to shew by what authority he claims them (*r*). Proceedings of this nature, with reference to the game laws are now very rare, they still, however, may be exerted by the express interference of the officers of the crown, though it appears from several cases, that the Court will not interfere, unless on the application of the Attorney-general (*s*). The instances of this proceeding in former times for the

SECONDLY,  
QUO WARRANTO.

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- (*n*) The King v. Forster, Bla. Com. 312. — 2 Term Rep. 484.  
 1 Ld. Raymond, 475. post, Appendix, 988.—The King v. Gilbert, 1 East. 583. post, Appendix, 1278.  
 (*o*) Ante, 87. 110. n. 1. 4 Term Rep. 202.  
 (*p*) 3 Bla. Com. 262.  
 (*q*) 3 Bla. Com. 263.—4

(*r*) Com. Dig. tit. Quo Warranto, A.

(*s*) The King v. Lowther, 2 Ld. Raym. 1409. 1 Strange, 637. S. C. post, Appendix, 1047.—Ibotson's case, Rep. Temp. Hard. 261.



SECONDLY,  
QUO WAR-  
RANTO.

usurpation of forests, chases, parks, and free warrens, are very numerous (*r*). The form of the proceeding is given in Coke's Entries (*s*). The defendant may disclaim the liberties mentioned in the information, either generally, or he may disclaim as to part, and justify as to the residue (*t*), and the replications and subsequent pleadings are the same as those in other proceedings by quo warranto (*u*). The judgment which is conclusive upon the king as well as the subject, if in favour of the former, is, that the subject be ousted of the supposed franchise if it do not exist, and that the king have it, where it has been forfeited (*x*); and in the latter case, a writ of seizure issues to the sheriff, upon which he is to return execution (*y*).

## II. OF OFFENCES PUNISHABLE BY PECUNIARY PENALTIES, AND COURSE OF PROCEEDING.

II. PECUNI-  
ARY PENAL-  
TIES AND  
COURSE OF  
PROCEEDINGS.

IT is observable, that most of the offences against the game laws are punishable by pecuniary penalties, which at the present time are

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| ( <i>r</i> ) Com. Dig. tit. Quo Warranto, A.—Co. Ent. 561.   | Appendix, 925.   |
| —Post, Appendix, 703. 705. 710. 875. 892. 925. 1004.   | ( <i>u</i> ) Rex v. Byron, Bridg. 23. post, Appendix, 892, 3.        |
| ( <i>s</i> ) Page 561.   | ( <i>x</i> ) Com. Dig. tit. Quo Warranto, C. 5. post, Appendix, 710. |
| ( <i>t</i> ) Id. 527. b. and 529. b. Com. Dig. tit. Quo Warranto, C. 4. — The King v. Talbot, Cro. Car. 311. post, | ( <i>y</i> ) Co. Ent. 539. b. 540: b.                                |

generally recoverable by three modes of proceeding; 1st. By action. 2d. By information in the Crown Office. 3d. By information before a magistrate.

II. PECUNI-  
ARY PENAL-  
TIES, AND  
COURSE OF  
PROCEEDINGS.

Formerly these penalties were, for the most part, recoverable only before a magistrate, in which case a moiety of the penalty goes to the informer, and the other to the poor of the parish, and no costs are recoverable, unless in case of an appeal and affirmance of the conviction, which must take place within three months after the offence was committed (2). But this division of the penalty and restriction as to costs and time of proceeding, together with the minute accuracy required in the form of the conviction, having been found to deter persons from prosecuting offenders, it was afterwards enacted, "That the informer might proceed by *action* of debt on the case, bill, plaint, or *information*, in any of his majesty's courts of record, in which, if he recovers, he shall likewise have double costs (a), and the whole of the penalty to his own use, and may sue for the same within six months after the offence was committed (b). But it is provided, that no offender shall be prosecuted by both of these methods, but only by one, and that in case of any second prosecution, the person so

(2) 5 Ann. c. 14. post, Appendix, 477. there are particular regulations relating to taking game in the night-time and out of season, which give costs to the informer.

(a) 8 Geo. 1. c. 19. s. 1. post, Appendix, 512.

(b) 2 Geo. 3. c. 19. s. 5 and 6. post, Appendix, 605, 6.

II. PECUNI-  
ARY PENAL-  
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PROCEEDINGS.

doubly prosecuted may plead in his defence the pendency of the former prosecution or the conviction or judgment had thereon (c). And from these advantages, as well as from the proceedings not requiring so much precision as a conviction (d), it is more frequent, particularly in cases where difficulties may arise, to proceed by action or information in the King's Bench, than before a magistrate, which latter course, however, is more expeditious and less expensive. We will consider these respective proceedings in the following order ; viz. 1st. Actions for the penalties and proceedings thereon. 2dly. Informations in the superior courts. 3dly. Informations before magistrates, and proceedings thereon.

*First, Actions for Penalties and Proceedings thereon.*

1st. Actions  
and proceed-  
ings thereon.

With respect to actions, we may observe that the first general regulation, that introduces them, directs that they shall be brought in a court of record.

The 8 Geo. 1. c. 19. s. 2. (e) enacted, " That  
" the action should be brought before the end of  
" the next term after the offence was committed."  
But the 3 Geo. 3. c. 19. s. 6. (f) enacts, " That  
" it shall be brought within six months after the  
" matter done," which means lunar (g) and not

(e) 8 Geo. 1. c. 19. s. 2.  
post, Appendix, 513. Rex v.  
Midlam, 3 Burr. 1720. post,  
Appendix, 1137.

(d) Avery v. Hoole, Cowp.

(f) Post, Appendix, 606.

(g) Lacon v. Hooper, 1  
Esp. Rep. 245. post, Appen-  
dix, 1169.

(e) Post, Appendix, 513.

calendar months; and since the last act it is sufficient to commence the action within six months, though after the end of the second term, nor is it necessary to aver in the declaration, though it must be proved at the trial, that the action was commenced within the time (*h*), and the record in the action will not of itself afford any inference that the suit was not commenced in due time (*i*).

The 18 Eliz. c. 5. s. 1. (*k*) enacts, "That every informer upon a penal statute shall exhibit his suit in proper person, and pursue the same only by himself or his attorney in court; consequently an infant who cannot appoint an attorney, and must sue by prochein amy or guardian, cannot be an informer for the recovery of penalties under the game laws (*l*). But any other person who has not been convicted of some crime which renders him incompetent to sue, may be an informer; but where a person's evidence is material for the support of the action, he must not be the plaintiff.

The action must not be brought under a fictitious name, or the court will set aside the proceedings, and the defendant may call for an account of the place of abode of the plaintiff, and if his attorney refuse to give it, or give in a

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dix, 1250.—King v. Peckham, Carthew, 406. post, Appendix, 979. 2 East. 573. post, Appendix, 1315. 2 Saund. 1. b. &c. n. 1.

(*h*) Lee v. Clark, 2 East. 333. post, Appendix, 1305.

(*i*) Hardyman v. Whitacre,

(*k*) Post, Appendix, 413.

(*l*) Sayer's Rep. 51.



1st. Actions, fictitious account, the court will stay the proceedings until security be given for the costs (*m*).  
and proceed-  
ings thereon.

Every person who is not qualified, or assisting a qualified person in sporting, is liable to an action for the penalties under the game laws, and though infancy precludes a person from being sued upon every contract except for necessities, it affords no protection for the commission of crimes or violation of the laws; a married woman is liable to be sued with her husband for penalties incurred by her infringement of the law. (*n*)

We have seen that several persons may be jointly sued for penalties, and that the acquittal of one will not preclude the plaintiff from recovering against those who are found guilty (*o*), and that several persons who sport together on the same day and concur in the same offence, whether sued jointly or separately, are liable for one penalty only (*p*), and that the using several dogs and a gun on the same day, for the same joint object, is only one offence (*q*). But an unqualified person by having game in his possession, and using dogs or engines on the same day, incurs several penalties, and any number of offences, committed within the limited time, may be included in one action.

The *declaration* in an action for penalties

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(*m*) *Strange*, 697. 705.— 1120.  
*Barnes*, 126.

(*n*) 8 Term Rep.—Com. Dig. tit. *Infant*, D. 4.—Bac. 573. post, Appendix, 1313.

*Abr. tit. Infant*, H. 4. 1. (*p*) Ante, 76. 85.

*Hawk. Pl. Cr.* 3.—2 Str. (*q*) Ante, 85.

usually states, that the defendant, within six months before the commencement of the action, on such a day and in such a parish or county, kept, or that he used, a greyhound, setting dog, or lurcher, or a gun, net, or snare, &c. being an engine for the destruction of game, to kill and destroy the game of England, he not being then qualified by the laws and statutes of this realm or any of them so to do, contrary to the form of the statute in such case made and provided, whereby he forfeited 5*l.* and whereby an action hath accrued to the plaintiff to demand and have the same. Any number of offences may be included in the same declaration, and it is usual to vary the statement of each offence in different counts, for keeping or for using the engine, and for exposing a hare, partridge, &c. to sale, so as to meet the evidence that may be adduced on the trial. And as no damages are recoverable by a common informer, it would be improper to conclude the declaration *ad damnum*, &c. The allegation that the suit was commenced within the limited time is not, we have seen, material, and though some day must be stated when the offence was committed, the precise time is immaterial, and it may be varied from in evidence, and it will be sufficient, if it be proved to have been committed within six months before the issuing of the writ (*s*), and though a parish or place must be named, yet it is not material in a declaration to name the real parish, though it is otherwise in

1st. Actions,  
and proceed-  
ings thereon.

1st. Actions, proceedings before a magistrate, because in the and proceed-  
ings thereon, latter, a moiety of the penalty goes to the poor of the parish where the offence was committed, but in an action the informer is entitled to the whole penalty (*t*).

The declaration must shew that the defendant kept or used one of those description of dogs mentioned in the statute, being a "greyhound, setting dog, or lurcher;" and if it be for using a hound or a dog generally, without describing what sort, it will be insufficient even after verdict, and will not be aided by the word "*engine*" in the statute, which can only be applied to inanimate instruments (*u*). It is, however, sufficient to allege, that the defendant kept or used a certain dog called a greyhound (*x*).

With respect to inanimate instruments, if they be of that description not named in the statute, it should be alleged, that they were *engines* to kill and destroy game, though after verdict the omission would be aided (*y*), it should be alleged that they were kept or *used* for that purpose, and if it were merely stated that the defendant kept or used a gun, being an engine for the destruc-

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(*t*) *Clark v. Taylor*, 3 Esp. Rep. 218. post, Appendix, 1217. — *The King v. Wyatt, Id. Raym.* 1478. post, Appendix, 1050.

(*u*) Ante, 83. *Hooker v. Wilks*, 2 Strange, 1126. post, Appendix, 1079. — *Reason v. Lisle*, 2 Com. Rep. 576. post, Appendix, 1059.

(*x*) *Rex v. Hartley, Cald.* Rep. 175. post, Appendix, 1183. This is distinguishable from the case of the *King v. Smith*, 2 Keble. 389. post, Appendix, 939.

(*y*) *Reason v. Lisle*, 2 Comyn's Rep. 576. post, Appendix, 1059.

tion of game, the declaration would be bad upon demurrer, though it has been held to be added after verdict, and read as if a comma were inserted after the word engine (*z*). The allegation that the defendant was not qualified is material, but it is not necessary, as in a conviction before magistrates, to negative every particular qualification, and the general allegation, that the defendant was not qualified by law so to do, is sufficient in a declaration (*a*). It has been decided that an allegation, that the defendant was not qualified by virtue of the statutes of this realm was bad, for he might be otherwise qualified by law (*b*); but in a subsequent case (*c*) a similar objection was overruled, and the Court said, the words may well import as much as being unqualified or not qualified. It should be shewn that the defendant was not qualified at the time when the offence was committed (*d*). In a count for a penalty for having game in possession, not being qualified, or being entitled to it under some person who is, the offence should be described, as

1st. Actions,  
and proceedings  
thereon.

- (*z*) *Avery v. Hoole*, Cowp. 825. post, Appendix, 1167. — *The King v. Gardner*, Andrews. 255. — 2 Strange. 1098. — 7 Mod. 279. — S. C. post, Appendix, 1068. to 1074.
- (*a*) *The King v. Stone*, 1 East. 639. post, Appendix, 1278. — *The King v. Jarvis*, 1 Burr. 148. post, Appendix, 1114. — *Reason v. Lisle*, 2 Com. Rep. 576. post, Ap-
- pendix, 1059. — *Bluet v. Needs*, 2 Com. Rep. 522. post, Appendix, 1057.
- (*b*) *Shipton v. Hopton*, 8 Mod. 238. post, Appendix, 1045.
- (*c*) *Reason v. Lisle*, 2 Com. Rep. 576. post, Appendix, 1059.
- (*d*) *Rex v. Alsop*, Sir T. Raym. 378. post, Appendix, 963. — Post, Appendix, 943. n. 2.



1st. Actions,  
and proceed-  
ings thereon.

an exposing to sale, and not as having unlawfully in possession, which is only declared by the 9 Ann. c. 25. to be deemed an exposure to sale; but unless the objection be taken by demurrer this defect is aided (*e*). The offence should be alleged to have been committed against the form of the statute or statutes which make it a penalty (*f*). But assuming it to be necessary in an action for a penalty by a common informer, that the count should refer to the statute giving the remedy, as well as to that creating the offence and giving the penalty; yet a count for the penalty on the Stat. 5 Ann. c. 14. stating that the defendant kept a snare to kill game, against the form of the statute in such case made and provided, by reason whereof, and by force of the statute, &c. an action hath accrued, &c. is sufficient; for the first statute mentioned refers to the 5 Ann. c. 14. creating the offence and giving the penalty; and the statute lastly mentioned refers to the 2 Geo. 3. c. 19. whereby the whole penalty is given to the common informer, the half only of which had been given to him by an intervening statute (*g*). If there be any defect in the declaration it may be amended, even after the time limited for bringing

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(*e*) Jones v. Bishop, Say. East. 333. post, Appendix, Rep. 64. post, Appendix, 1305.

1104. and *quære* if demurrable. (*g*) Lord Clanricarde v. Stokes, 7 East. 516. post,

(*f*) Lee v. Clarke, 2 Appendix, 1330.

a fresh action, but not so as to enable the plaintiff to introduce fresh causes of action (*h*).

1st. Actions,  
and proceed-  
ings thereon.

The usual *plea* in this action is the general issue, that the defendant does not owe the sum demanded, or any part thereof, though not guilty would suffice (*i*); or he may plead the pendency of another prosecution for the same offence, or a prior conviction (*k*); if the latter, he must obtain a copy of the conviction, and if refused must remove the proceeding by certiorari, which he may do in that case without being liable to pay the costs, though the conviction be affirmed (*l*). The Statute of Limitations may in this action for a penalty be given in evidence under the general issue, and need not be pleaded (*m*).

If the declaration do not contain counts for more penalties than have been incurred, the defendant may bring the amount with costs into court, and thereby stay the proceedings (*n*). So if the defendant admits a liability as to one or more of the penalties, but disputes it as to the residue, he may bring the admitted penalties into court on the counts applicable to them, and de-

(*h*) Howell v. James, 1 D.—9 East. 473.—Law v. Wils. 163. post, Appendix, 1103. 4 East. 432. 435. Worrall, 1 Wils. 177. post, Appendix, 1103.

(*i*) 1 Term Rep. 462. Bac. (l) Rex v. Middleton, 3 Abr. Pleas, T.—Com. Dig. Burr. 1720. post, Appendix, Pleader, 2 S. 1137.

(*k*) 8 Geo. 1. c. 19. s. 2. (m) 2 Saund. 63. b.—2 post, Appendix, 513.—Chit- East. 336.

y on Pleading, 2nd edit. 2 (n) Webb v. Punter, 2 Vol. 541.—1 Strange. 701. Strange. 1217.

—Bac. Ab. Action qui tam,

1st. Actions,  
and proceed-  
ings thereon.

send as to the residue (*o*). If, on the other hand, the informer be disposed to take less than has been forfeited, the action may be compounded, but this must be with leave of the court, or of a judge after the defendant has pleaded, or the informer will be liable to the penalties of the Statute of Elizabeth (*p*). Where the action is not compromised the defendant will be entitled to costs upon a judgment on non pros, for not replying to his plea (*q*), or he may have judgment as in case of a nonsuit, if the plaintiff do not proceed to trial (*r*).

Evidence.

With respect to the *evidence*, the plaintiff must prove that the defendant committed the act constituting the offence, the nature of which proof may be collected from the previous observations as to what constitutes a keeping or using a dog or engine for the destruction of game (*s*); the plaintiff must also shew, by producing the writ, that the action was commenced within six lunar months after the offence was committed (*t*), unless the record itself, by relation to the first day of the term, affords presumptive evidence of the action having been commenced in due time, in which case the writ need not be produced (*u*).

(*o*) Cro. Jac. 128. 498.  
629. and 3 Mod. 41.

(*p*) 18 Eliz. c. 5. post,  
Appendix, 413.

(*q*) Law. v. Worrall, 1  
Wils. 177. post, Appendix,  
1103.

(*r*) Watson v. Jackson, 1  
Wilson. 325. post, Appen-  
dix, 1104.

(*s*) Ante, 78 to 81.

(*t*) 2 Saund. 63. b. n. 6.

Lee v. Clarke, 2 East. 333.  
post, Appendix, 1308.

(*u*) 2 Saund. 1. b. n. 1.

See also the observations in  
Hardyman v. Whitacre, 2  
East. 573. post, Appendix,  
1315.

When necessary the writ may be produced at any time during the trial (*x*). If the defendant were not served with the first writ, and an alias has issued, it must appear that the first writ was returned, otherwise the second is no regular continuance of it (*y*), but if the first writ appear to have been returned, and the return duly entered on record, the continuances may be entered at any time afterwards (*z*). Formerly when a moiety of the penalty was given to the poor of the parish, a parishioner who was rated to the relief of the poor was not a competent witness, which is assigned as the reason for passing the statute, by which the whole penalty is given to the informer; but that objection is in all cases removed by the Statute 27 G. 3. c. 29. where the penalty does not exceed 20*l*. (*a*)

It is not necessary for the plaintiff in an *action* on the game laws, to give negative evidence of the want of qualification in the defendant; for the proof of the fact having been committed by him is sufficient to throw upon him the onus of proving the affirmative, that he was qualified, which must be best known to him (*b*).

We have already considered what is a suffi-

(*x*) *Maughan v. Walker*, Peake's Ca. Ni. Pri. 163.

(*y*) *Harris v. Woolford*, 6 Term Rep. 617.

(*z*) *Bates v. Jenkinson*, 6 Term Rep. 618.

(*a*) *Rex v. Davis*, 6 Term Rep. 177. post, Appendix, 1249.

(*b*) *Rex v. Stone*, 1 East. 639. post, Appendix, 1286.

9. this was admitted by the Court, though divided as to the necessity of the prosecutor's proving the negative in proceedings before a magistrate, 3 East. 197, 8. 200.



1st. Actions,  
and proceed-  
ings thereon.

cient qualification, which must be proved by the defendant (*b*). A legal or an equitable interest in an estate of inheritance, whether freehold or copyhold, of the clear yearly value of 100*l.* in the defendant's or his wife's right, or an estate for life, or for the residue of a term for 99 years, of the clear annual value of 150*l.* or the being the eldest son of an esquire, or of a person of higher degree, constitute a sufficient qualification, and the lord of a manor and his gamekeeper, and the owner of a free warren, as such, are also qualified to kill game within the precincts of their own liberty (*c*). It is not necessary for these persons in all cases to produce their title deeds. Actual possession of an estate or receipt of money from the person in possession is *prima facie* evidence of the seisin in fee of the estate (*d*). Proof of a person having acted as lord of a manor, by holding courts, &c., or that his father has practised or acted as a barrister, &c. would in general suffice (*e*); nor will the Court, in an action on the Game Laws, try the right to a manor, and if the person who appointed the defendant his gamekeeper has only a colourable title, it will not be permitted to charge him in such action (*f*); but if he has not any ground of claim, the mere circumstance

(*b*) Ante, 34 to 74.

(*c*) Ante, 41 to 74.

(*d*) Peake's Law of Evidence, 2 ed. 354.

(*e*) 3 Term Rep. 635.—

4 Term Rep. 366, 7.

(*f*) Calcraft v. Gibbs, 4 Term Rep. 681. post, Appendix, 1243. 1245.

of his appointing the defendant will not form any excuse (g). 1st. Actions, and proceedings thereon.

Though the plaintiff is not bound in the first instance to prove that the defendant was not qualified, it will be frequently necessary or prudent in those cases, where the defendant may probably be able to adduce presumptive evidence of a qualification, to be prepared to rebut it, as by shewing that he has mortgaged the estate, or that it is reduced by land tax or other outgoings, below the required annual value. In these cases a claim made by the defendant before commissioners of income, of an allowance by reason of charges affecting the land, is sufficient evidence of its being of not greater annual value than that stated by the defendant (h).

As the right to the penalty only accrues to any particular individual, by his commencing an action, he cannot have sustained any damage by the previous detention of the penalty, therefore a *verdict* must not be taken for damages (i). Verdict and new trial.  
We have seen that in a joint action of debt against several defendants, a verdict may be taken against some of them, and the others may be acquitted (k). A verdict will cure an ambiguity, but it will not aid a case where the gist of the action is not stated. The difficulty is only in the

(g) *Wetherall v. Hall*, Cald. 230. post, Appendix, 1193.

(h) *Rex v. Clarke*, 8 Term Rep. 220. post, Appendix, 1264.

(i) 4 Burr. 2021. 2490.

(k) Ante, 174. *Hardyman v. Whitacre and others*, 2 East. 573. post, Appendix, 1313.

1st. Actions.  
and proceed-  
ings thereon.

application of this rule (*l*). It is an established rule, that where the jury, though contrary to the evidence, find a verdict for the *defendant* in an action upon the Game Laws, the Court will not grant a new trial (*m*) ; and it was formerly the practice to refuse a new trial, even where the Jury had found for the defendant in consequence of a mistake or misdirection by the judge ; but now a new trial may be had where the verdict has been obtained from the latter cause (*n*).

The plaintiff in an action on the Game Laws is, by the Statute 8 Geo. 1. c. 19. s. 1. (*o*), entitled to double *costs*, but the term double or treble costs is not to be understood to mean, according to their literal import, twice or thrice the amount of the single taxed costs, and where a statute gives double costs they are calculated thus: first the common costs, then half the common costs ; if treble costs, first the common costs, secondly half of these, and then half of the latter.

(*l*) *Avery v. Hoole*, Cowp. 825. post, Appendix, 1167. — *Reason v. Lisle*, 2 Com. Rep. 576. post, Appendix, 1059 ; see the principles and cases in 1 Saund. 228. n. 1.

(*m*) *Brook v. Middleton*, 10 East. 268.

(*n*) *Seymour v. Day*, 2 Strange. 899. post, Appen-

dix, 1055. — *Jarvois v. Hall*, 1 Wils. 17. post, Appendix, 1093. — *Fitch v. Nunn*, Barnes. 466. post, Appendix, 1105. — *Calcraft v. Gibbs*, 5 Term Rep. 19. post, Appendix, 1246. — 6 East. 316. n. b. — *Brooke v. Middleton*, 10 East. 268. — *Tidd's Practice*, 4 ed. 803.

(*o*) Post, Appendix, 513.

*Secondly, Informations in the Superior Courts.*

2ndly. Informations in the superior courts.

Since the Statute 8 Geo. 1. c. 19. s. 1. (*p*) and the 2 Geo. 3. c. 19. s. 4. (*q*) the penalties incurred under those statutes, or any previous ones, are recoverable not only by information before a magistrate, and by action, but also by *information in any of the courts at Westminster*, and this mode of proceeding is now very frequent in the Crown Office (*r*).

The usual course is for the informer to make an *affidavit*, intituled *in the King's Bench*, before a commissioner for taking affidavits in that court, and concisely stating, that the deponent saw the defendant use a greyhound, setting dog, or lurcher, or some named engine for the destruction of game, on a particular day and place, within such a county, stating the offence with some particularity, and that the deponent verily believes that the defendant was not qualified according to law so to do.

The next proceeding is to frame the *information*, which is intituled of the term in which it is filed, and states the venue in the margin, and commences with the words, "Be it remembered, that A. B. of &c. who for himself in this behalf prosecuteth in his proper person (*s*), cometh here into the court of our present sovereign lord

(*p*) Post, Appendix, 513.

Burn's Justice, 774.

(*q*) Post, Appendix, 605.

(*s*) 18 Eliz. c. 5. s. 1. post,

(*r*) See 4 Bla. Com. 308.—

Appendix, 413.

4 Hawk. Pl. Cr. 103, &c.—2



andly. Informa-  
tions in  
the superior  
courts.

the king, before the king himself, on ———  
next after ———, in this same term, and for  
himself giveth the Court here to understand and  
be informed that C. D., late of, &c. on, &c. at,  
&c. committed the offence complained of." It  
is usual in the first count not only to state the  
act committed by the defendant, but also to ne-  
gative particularly every qualification, and then  
to add a concise count, resembling that in a de-  
claration for the penalty. Several counts for  
any number of offences may be, and frequently  
are, inserted in the same information, and the  
course of precedents is to conclude each count,  
" in contempt of our said lord the king and  
" his laws, to the evil and pernicious example  
" of all others, and against the peace of our said  
" lord the king, his crown and dignity, and also  
" against the form of the statute in such case  
" made and provided, by reason whereof, and  
" by force of the statute in such case made and  
" provided, the said C. D. hath forfeited and  
" lost the sum of 5*l.* to him the said A. B. the  
" informer in this behalf ;" and the information  
concludes thus, " whereupon the said A. B. who  
" for himself in this behalf prosecuteth, prayeth  
" the consideration of the Court here in the pre-  
" mises, and that the several forfeitures herein  
" abovementioned may be allowed and adjudged to  
" him the said A. B. the informer aforesaid, accord-  
" ing to the form of the statute in such case  
" made and provided, and that due process may  
" be awarded against the said C. D. in this be-

“ half, to make him answer to the said A. B. 2ndly, Infor-  
 “ touching and concerning the premises afore- mations in  
 “ said.” This information may, by leave of the the superior  
 Court, be amended (*t*).

The master of the Crown Office *indorses* on the information a minute of the time of his having received it in Court, and which can only be during term, and, where an attorney is employed, a memorandum of the warrant to prosecute must be filed before process, as in civil proceedings.

The process on behalf of a common informer Process and arrest. on a penal statute, is *an attachment* (*u*), which issues out of the Crown Office, directed to the sheriff of the county, where the defendant resides, commanding him to attach the defendant, so that he have him in the King's Bench on some general return day, to answer the informer of certain trespasses and contempts against the form of the statute made for the better preservation of the game, whereof, at the suit of the said A. B., who for himself in this behalf prosecuteth, he is impeached.

This process is to be *indorsed* as follows:—  
 “ The within named A. B. for himself prose-  
 “ cuteth this writ against the within named C. D.  
 “ upon an information exhibited against him by  
 “ the said A. B. in the court of our lord the  
 “ king, before the king himself, for the recovery

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(*t*) Howell v. James, 1 *dix*, 1103.  
 Wilson. 163. post, Appen- (*u*) 4 Hawk, Pl. Cr. 139.  
*dix*, 1103.—Law v. Worrall, 140, 7th ed.  
 1 Wils. 177. post, Appen-

Process and  
arrest.

“ of several penalties of 5*l.* each, alleged by the  
“ said information to be forfeited by the said  
“ C. D.” It is advisable also to indorse a refer-  
ence to the statute (*x*). In addition to the above  
indorsement, the clerk in court for the prosecu-  
tor subscribes a direction to the sheriff to take  
bail for 10*l.*

Upon this writ, the sheriff *arrests* the de-  
fendant, and he must either lie in custody or  
give a bail bond, or security for his appearance  
at the return of the attachment. In general, since  
the Statute 12 Geo. 1. c. 29. no person can be  
arrested for a pecuniary demand, unless there be  
a positive affidavit of a debt to the amount of  
10*l.* or upwards; and, in an *action* of debt on a  
penal statute, the general rule is, that the de-  
fendant cannot be held to bail, though it be for  
a sum certain, it being a maxim that every man  
shall be presumed innocent of an offence till he  
be found guilty (*y*). But it is the constant prac-  
tice, in proceedings by information in the Crown  
Office, on the Game Laws, to arrest the party  
upon the attachment for 10*l.*; a circumstance  
which renders this proceeding by information  
peculiarly desirable where the offender is likely  
to abscond.

Appearance,  
issue, trial,  
&c.

The defendant may appear before the return  
day of the writ, but till appearance he cannot  
obtain a copy of the information. The usual  
plea is the general issue not guilty; though in

(*x*) 18 Eliz. c. 5. s. 1.—  
2 Burn. 776.

(*y*) Yelverton. 53.—Gilb.  
C. P. 37.

an action, the proper plea is *nil debet*. Upon <sup>Appearance,</sup> this plea the issue is joined and tried <sup>issue, trial,</sup> as <sup>&c.</sup> upon other informations in the Crown Office. The same rules relating to the compounding of the offence, to the evidence, and to the costs (z) which prevail in an action for the penalties, equally apply to this proceeding by information.

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*Thirdly, Informations before Magistrates, and Proceedings thereon.*

WE have seen that the general permission to proceed for penalties under the Game Laws by *action* is of modern introduction (a). Formerly, the only mode of proceeding was by information before a justice or justices of the peace; and though, by the Statutes 8 Geo. 1. c. 19. s. 1. (b) and the 2 Geo. 3. c. 19. s. 5. (c) an informer has now the power of proceeding by action, or information in a court of record, yet, by the same regulations, and by prior and subsequent statutes, we shall find that most of the penalties incurred under the Game Laws, may be recovered before a justice of peace. The principal regulation of this nature is the 5 Ann. c. 14 s. 4. (d) relating to the recovery of the penalty for keeping or using a dog or engine, being unqualified, and

3dly, Information before magistrate, and proceedings thereon.

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(z) *Law v. Worrall*, 1 Wils. 177. post, Appendix, 1103.

(a) *Ante*, 171 to 173.

(b) *Post*, Appendix, 513.

(c) *Post*, Appendix, 605.

(d) *Post*, Appendix, 479.



Sdly, Information before magistrates, and proceedings thereon.

enacts, "That if the party shall be thereof convicted upon the oath of one or two credible witnesses, by the justice or justices of the peace where such offence is committed, the person or persons shall forfeit the sum of 5*l.*, one half to be paid to the informer and the other half to the poor of the parish where the same was committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of such justice or justices before whom such person or persons shall be convicted as aforesaid; and for want of such distress, the offender or offenders shall be sent to the House of Correction for the space of three months, for the first offence, and for every such other offence four months."

The second section, after imposing a penalty upon higglers, &c. for buying or selling game, and directing the mode of proceeding, enacts, "Provided that such conviction be made within three months after such offence committed, and that no certiorari shall be allowed to remove any conviction made, or other proceedings of or concerning any matter or thing in this act, into any of the Courts at Westminster, upon any pretence whatsoever, unless the party or parties against whom such conviction shall be made shall, before the allowance of such certiorari, become bound to the person or persons prosecuting the same in the sum of 50*l.*, with such sufficient securities, as the justice or justices of the peace, before whom such offender

shall be convicted, shall think fit, with condition  
 to pay unto the prosecutors, within 14 days  
 after such conviction or procedendo granted,  
 their full costs and charges, to be ascertained  
 upon their oaths, and that, in default thereof,  
 it shall be lawful for the said justice or justices,  
 or others, to proceed for the due execution of  
 such conviction, in such manner as if no such  
 certiorari had been awarded."

3dly, Inform-  
 ation be-  
 fore magis-  
 trate, and  
 proceedings  
 thereon.

The subsequent statutes either enact that this  
 course of proceeding shall be adopted for the re-  
 covery of penalties imposed by them, or con-  
 tain peculiar regulations to be observed only in  
 particular cases. We will consider the regu-  
 lations of a general nature under the following  
 heads :

1st, The time within which the prosecution  
 must be commenced.

2ndly, Who may be the informer.

3rdly, Who may be prosecuted.

4thly, The information.

5thly, The summons to the offender.

6thly, His appearance, or default ; and of the  
 hearing of the complaint.

7thly, Of the witnesses, and evidence.

8thly, Of the conviction.

9thly, The execution, and levying the penalty.

10thly, The appeal, when given, and recogni-  
 tance to try it.

11thly, The certiorari, and bond to prosecute it.

12thly, The execution upon the affirmance,  
 and costs.

1. Time  
when infor-  
mation must  
be made.

1st. Though the fourth section of the Statute 5 Ann. c. 14. (e) does not contain any regulation as to the *time* within which the information shall be laid, yet it has been decided (f) that the second section of the statute, which we have seen provides that the conviction shall be made within three months after the offence was committed, is applicable to the 4th section, and consequently the information, as well as the conviction, must take place within that time. And it was even held, that though the hearing of the matter was adjourned over with the consent of the defendant, a conviction afterwards was bad. An information for taking game in the night, or on Sunday or Christmas-day, must be laid within one calendar month (g).

2. Who may  
be informer.

2ndly. We have already considered who may be an informer in an action on the Game Laws. As the informer will not be a competent witness, the proceedings should be carried on in the name of some person whose evidence will not be material (h).

3. Against  
whom an in-  
formation  
may be laid.

3rdly. An information may be laid against any unqualified person, though an infant, or feme covert (i), and it may be against one alone, or against several jointly, who have concurred in committing the same offence, and the acquittal of one would not affect the conviction of the

(e) Post, Appendix, 479.

post, Appendix, 640.

(f) Rex v. Tolley, 3 East.  
467. post, Appendix, 1317.

(h) See post, Appendix.  
942.

(g) 13 Geo. 3. c. 80. s. 9.

(i) Ante, 174.

others (*k*). We have seen, that where several persons are jointly guilty of one offence against the game laws, they are in general only liable to one penalty, and, consequently, that separate informations cannot be made against them; nor can they be separately convicted of distinct penalties for the same offence (*l*).

4thly. With respect to the *information*, some of the statutes, and particularly that against the killing game in the night-time, or on Sunday, or on Christmas-day, require the information to be on oath. But the 5 Ann. c. 14. and most of the other statutes, do not contain such regulation, and consequently a verbal information, without oath, would suffice (*m*). It has been observed, however, that though a statute may not require that the information should be upon oath, still it would not be bad upon that account; and that it has been held a conviction ought to be founded upon a preceding information, or complaint (*n*); and it is also observed, that it is now fully settled that, in convictions upon the Statute of Ann. the *information* must negative every one of the qualifications in the preceding Statute of Charles the Second (*o*). But as no written information is requisite, this must mean the information as after-

3. Against whom an information may be laid.

4. The information.

(*k*) *Hardyman v. Whit-*  
*acre*, 2 East. 573. post, Ap-  
pendix, 1313.

(*l*) Ante, 76, 7. 174.—*The*  
*King v. Bleasdale* and an-  
other, 4 Term Rep. 809.  
post, Appendix, 1233.

(*m*) Post, Appendix, 940.

n. 1.

(*n*) By Mr. Serjeant Wil-  
liams, in *Saunders's case*, 1  
Saund. 262. n. 1. post, Ap-  
pendix, 940.

(*o*) *Id. ibid.* post, Appen-  
dex, 941.



## 4. The information.

wards set forth in the conviction (*p*). The information need not be *qui tam* (*q*). If an information in writing be prepared, it usually states the appearance of the informer before the justice, and that within three months, and on such a day, and within such a parish, the defendant, not then being in any respect qualified, (enumerating every qualification,) (*r*) kept, or that he used one of the dogs named in the statute, or some named engine, to kill and destroy the game, contrary to the statute, whereby he forfeited 5*l.* half to the informer, and half to the poor of the parish where the offence was committed, and concludes with a prayer of the judgment of the justice, and that the defendant may be summoned to answer the premises, and make his defence (*s*). The information need not state that the informer proceeds as well for the poor of the parish as for himself, for the division of the penalty must follow the conviction (*t*). The time when the offence was committed should be stated, in order, as it is said, that it may appear that

(*p*) See the form, Burn's Justice, tit. Game, 2 Vol. 473, 4.

(*q*) The King v. Lovett, 7 Term Rep. 152. post, Appendix, 1254.

(*r*) It was formerly considered that the information need only state generally that the defendant was not qualified; but it is now established, that an information, as

stated in the conviction, must negative each particularly. The Queen v. Matthews, 10 Mod. 26. post, Appendix, 1010. n. a.

(*s*) See the precedent, 2 Burn's Justice, tit. Game, 472 and 474.

(*t*) The King v. Lovett, 7 Term Rep. 152. post, Appendix, 1254.—Com. Dig. tit. Action on the Statute.

the prosecution was commenced in due time (*u*); but the precise day is not material; and though it might be objectionable in a declaration, it is sufficient in an information to state that the offence was committed between such a day and such a day, without stating any one in particular (*x*). But it should be alleged that the defendant was not then qualified, for he might have been qualified at the time when the offence was committed, though he might not be so at the time of the information, or conviction (*y*).  
 4. The information.

As a moiety of the penalty goes to the poor where the offence was committed, a mistake, in an information, of the name of the parish would be fatal, though it would be otherwise in a declaration (*z*). But if the place was extra-parochial, then, as the informer would be entitled to the whole penalty, a mistake might not be material (*a*); and where a conviction (*b*), which stated the offence to have been committed at the vill of Mottram Andrews, without naming any parish, was removed by certiorari into the King's Bench, the Court refused to quash it, saying, if there was such a parish as Mottram Andrews,

(*u*) The King v. Pullen, 1 Salk. 369. post, Appendix, 974.

(*x*) The King v. Chandler, 1 Salk. 378.—Carthew. 501. post, Appendix, 1001. and 986.—The King v. Speed, Lord Raym. 583. post, Appendix, 988.—Regina v. Simpson, Gilbert, 282. post, Appendix, 1012 and 1016.

(*y*) Rex v. Alsop, Sir T. Raymond, 378. post, Appendix, 963. id. 943. n. 2.

(*z*) Clarke v. Taylor, 3 Esp. Rep. 218. post, Appendix, 1271.

(*a*) The King v. Wyatt, 2 Lord Raym. 1478. post, Appendix, 1051.

(*b*) Id. ibid.

## 4. The information.

it shall be *prima facie* intended to be co-extensive with the vill ; but if the offence was committed in a vill which was extra-parochial, (which may be,) then the informer will have the whole penalty. The mode of describing the fact of keeping or of using the dogs or engines is the same as in a declaration (*c*). It is usual (as in a declaration) to charge that the offence was committed contrary to the statute ; but, in the *King v. Chandler*(*d*), the Court held that the offence need not be laid *contra pacem*, because mere form or formality is not required in these or any other summary proceedings(*e*). A party may be prosecuted by one information for several offences, and one conviction for the whole will suffice(*f*).

## 5. The summons.

5thly. The defendant must be summoned, and if he be convicted without it, the conviction may be removed by *certiorari*, and would be quashed ; and if the magistrate acted wilfully, an information against him would be granted (*g*). The summons, which is usually directed to a constable, should be in writing, and signed and sealed by the magistrate, and shortly state the information, but without negating each particular qualification ; and should require the constable to summon the defendant to appear at a named

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(*c*) Ante, 176 to 179.

(*d*) 1 Salk. 378. post, Appendix, 1001.

(*e*) See Lord Kenyon's observations on the form of informations, in the *King v. Swallow*, 8 Term Rep. 284.

post, Appendix, 1268.

(*f*) The *King v. Swallow*, 8 Term Rep. 284. post, Appendix, 1268.

(*g*) *Rex v. Heber*, 2 Bernard. 34. 77. 101. post, Appendix, 941. 1286.



hour and place, within the magistrate's jurisdiction, and before him to answer the information (h), and should be served either personally or left at the residence of the defendant (i). A reasonable time must be allowed by the summons for the defendant to prepare for his defence (k), and a time and place of appearance should be named (l). But all objections to the summons will be taken away by the defendant's appearance; though if, under circumstances, he had not sufficient time to prepare for his defence, the magistrate ought to adjourn the hearing to some future day within the three months allowed for conviction. Therefore, in the case of the King v. Stone (m), Lord Kenyon, and Lawrence, J. said, "Justice requires that the party should be duly summoned and fully heard before he is condemned; but if he be present at the time of the proceeding, and hear all the witnesses, and do not ask for further time to bring forward his defence, this at all times has been deemed sufficient."

6thly. If the defendant appear, the information is then stated to him, and he is required to say whether or not he disputes the charge; and if he deny it, the informer must proceed to establish his information. If the defendant, having been duly

5. The summons.

6. The appearance, or default.

(h) See the form, 2 Burn's Justice, tit. Game, 473. post, Appendix, 1268, 9.

(i) 4 Term Rep. 465.

(k) The King v. Johnson, 1 Strange. 261. post, Appendix, 1038.

(l) The Queen v. Simpson, 10 Mod. 248. 378. post, Appendix, 1017. 1029.

(m) 1 East. 639. post, Appendix, 1286. 1289. vid. et 941.



6. The appearance, or default.

summoned, neglect to appear, and do not send a sufficient excuse to the magistrate, he may, notwithstanding his absence, proceed to the investigation of the evidence, and convict him, if the offence be established (*n*).

7. The witnesses, and evidence.

7thly. If the defendant confess the charge before the justice, that will dispense with the production of any evidence on the part of the informer; provided the information which is thus admitted, be sufficient in every respect, and negative every qualification. For it is a rule in evidence, that the confession of a party is the strongest evidence of the offence, because it excludes the possibility of doubt; and therefore, though a statute may direct a conviction to be "upon the oath of one or two credible witnesses," without adding, "or by the confession of the offender," yet a conviction upon his confession has been held sufficient; and it has even been decided that a confession made to others, and not to the justice, if proved by such persons to his satisfaction, in the presence of the defendant, will be sufficient. And where the defendant confesses the charge, it seems to be sufficient only to state in the conviction, the information, the defendant's appearance, the confession, and adjudication(*o*); but a confession will extend no further than to the

(*n*) *The Queen v. Simpson*, 10 Mod. 378. post, Appendix, 1026.

(*o*) See the note of Mr. Serjeant Williams, in Saunders's case, 1 Saund. 262.

*n*. 1. post, Appendix, 941, 2. *The King v. Gage*, 8 Mod. 64. post, Appendix, 1043.—*The King v. Dore, Andrews*, 302. post, Appendix, 1075.

facts charged in the information ; therefore, if the offence be not brought by the information within the Act of Parliament, upon which the conviction is founded, the defendant's confession will not make the conviction good (*p*).

7. The witnesses, and evidence.

With respect to who is competent to be a witness, it was formerly considered that the informer, though he has a share of the penalty, was a competent witness ; but it is now clearly established to be otherwise ; for which reason, the conviction must state the name of the witness, in order that it may appear that he was not the same person as the informer (*q*) ; for the informer stands in the situation of a party to a suit, who, at law, is not in general a competent witness ; and proceedings before a magistrate are tried in a summary way, in derogation of the common law, and only per testes to a judge, who is supposed to be wholly ignorant of the cause ; and therefore the witness should be less liable to exception ; and the statute not only requires a witness, but a *credible* witness (*r*). Formerly, as part of the penalty went to the poor of the parish, no parishioner, if rated to the relief of the poor, was a competent witness ; but the sta-

(*p*) *Rex v. Little*, 1 Burr. 605. post, Appendix, 942.

(*q*) Post, Appendix, 942. *The King v. Drake*, 2 Shower, 476. Appendix, 969. 970. *The Queen v. Cobbold, Gilbert*, 111. post Appendix, 1015.—*The King v. Tilley*, 1 Strange. 315. post, Ap-

pendix, 1041.—*The King v. Stone*, 2 Lord Raym. 1545. post, Appendix, 1054.—*The King v. Blaney, Andrews*, 240. post, Appendix, 1074.

(*r*) *Regina v. Cobbold, Gilbert*, 111. post, Appendix, 1015.

7. The witnesses, and evidence.

tute 27 Geo. 3. c. 29. removes this objection, by enabling inhabitants and parishioners to give evidence in all cases, provided the penalty do not exceed 20*l.* (*s*).

As an inducement to persons who may themselves have been guilty of offences against the Game Laws, the 5 Ann. c. 14. s. 3. (*t*) provides, that persons in this situation, who shall make *discovery* of any higler, &c. who has bought or sold, or offered to buy or sell game, so that the latter shall be convicted, such *discoverer* shall be discharged of the penalties of that act, and shall receive the same benefit or advantage as any other informer shall be entitled to by virtue of the act for such discovery and information.

Every witness must be sworn by the magistrate before he gives his testimony (*u*). And such testimony must be given on oath, in the presence of the defendant; and it is not sufficient merely to read over the deposition in the defendant's presence (*x*).

The informer must prove the defendant's *keeping or using* one of the dogs particularly mentioned in the Statute 5 Ann. c. 14. or some engine for the destruction of game. We have, in a former chapter (*y*), considered what evidence

(*s*) The King v. Davis, 6 Term Rep. 177. post, Appendix, 1249.

(*t*) Post, Appendix, 478.

(*u*) The King v. Corden, 4 Burr. 2279. post, Appen-

dix, 1157.

(*x*) The King v. Crowther, 1 Term Rep. 125. post, Appendix, 1215.

(*y*) Ante, 78 to 81.



will establish the unlawful keeping or using such instruments for the destruction of game. 7. The witnesses, and evidence.

With respect to the *qualification*, the Court was equally divided in opinion in the case of the *King v. Stone* (z), upon the question whether the informer should be required to prove the negative, that the defendant was not qualified, or whether the defendant, in whose power more particularly the evidence of qualification must lie, should be compelled to adduce it. Lord Kenyon, Ch. J. and Grose, J. were of opinion that the informer ought to give the evidence; Mr. Justice Lawrence, and Mr. Justice Le Blanc, that the defendant should adduce it. The opinion of Lord Kenyon and Mr. Justice Grose, requiring the proof by the informer, appear to have proceeded upon the ground of the prior decisions, establishing that rule of evidence, on the necessity of courts of justice holding a strict hand over these summary proceedings, and on the inconvenience and vexation which might ensue from persons being compelled to prove their interest in an estate, in order to establish a qualification on the bare surmise of a common informer. The opinions of Lawrence and Le Blanc, Justices, appear to have been, that the proof of the fact having been committed by the defendant, was sufficient to throw the onus upon him of proving that he was qualified to do it. That the qualifications are so numerous that it would be impracticable for an informer to nega-

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(z) 1 East. 639. post, Appendix, 1278.



7. The witnesses, and evidence.

tive upon oath every possible qualification. That the general rule is, that a party shall not be required to prove a negative; that there would be little or no advantage to a defendant in compelling the prosecutor to call a witness to give general negative evidence of the want of qualification, which at most could only be required; and that there is no reason why there should be any distinction between the mode of proof in a *proceeding before a magistrate* and in an *action* on the game laws, in which no negative proof in regard to the qualification is ever required on the behalf of the prosecutor.

It may be observed, that the Statute 22 and 23 C. 2. c. 25 (a) prohibits all persons, unless they be qualified as therein mentioned, from sporting; and the 5 Ann. c. 14. enacts, "That if any person, not qualified by the laws of the realm so to do, shall sport, he shall forfeit the penalty." These provisions, taken collectively, appear to prohibit persons in general from sporting, unless in particular excepted cases; and therefore, as the presumption of law is necessarily against every one, the defendant ought to prove that he falls within the excepted cases. And as the legislature have thought fit to repose confidence in magistrates, and to give them precisely the same jurisdiction as the superior courts, in the investigation and punishment of this offence, there can be no reason why a different rule of evidence should be required to be observed by

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(a) Post, Appendix, 445.

one judicature which must not equally affect the other. 7. The witnesses, and evidence.

As long, however, as this point remains unsettled, the informer ought to be prepared with the best possible evidence, to raise at least a presumption that the defendant was not qualified; but slight evidence of the want of qualification will suffice (*b*). This appears to have been admitted by Lord Kenyon, in the above-mentioned case, in which he said "that the prosecutor might give negative evidence of the want of qualification, and that a witness might give general evidence of it from his belief; he might know the defendant, and know that, to all appearance, he is not a man of substance; and evidence may be given of his condition in life, to raise a presumption against his having any of the necessary qualifications."

A return under the Income Act, by which the defendant stated that his estate was worth less than 100*l.* a year, will be good evidence (*c*). In short, the informer should adduce the best possible evidence, so as to throw the onus probandi of a sufficient qualification upon the defendant; and such evidence is recommended by the Court to be stated in the conviction (*d*), though it seems not to be absolutely necessary (*e*). If the defendant can rebut the presumption, or, as in the

(*b*) Per Chambre, J. in *pendix*, 1264.

*Frontin v. Frost*, 3 Bos. and (d) *Id. ibid.*

*Pul.* 307. (*e*) *The King v. Pearce*,

(*c*) *The King v. Clark*, 8 9 East. 358. post, *Appen-*  
*Term Rep.* 220. post, *dix*, 1343.

7. The witnesses, and evidence.

case of a gamekeeper, can shew that there is a *bonâ fide* claim to a manor, or that the boundaries are really disputed, he ought to be acquitted, as a question of that nature cannot be tried in a penal action (*f*).

It appears to be established as a general rule, that if there be evidence *tending* to prove the offence, and the magistrate forms his conclusion upon it that the offence has been committed, the Court will not minutely weigh the propriety of his conclusion; and therefore, in the case of the *King v. Davis* (*g*), Lord Kenyon said, here was evidence *tending* to prove the offence. That being the case, we have no authority to examine farther, and see whether the conclusion drawn by the magistrate was or was not inevitable from the evidence. It is sufficient in convictions, if there were such evidence before the magistrate as in an action would have been sufficient to be left to a jury.

8. Convictions.

8thly. If the magistrate be satisfied of the defendant's guilt, either upon his own confession or upon the evidence that has been adduced, he then *convicts* him; and, except in cases where the statute itself directs the distribution of the penalty, the magistrate should adjudge how it must be disposed of (*h*). It is not incumbent on the magistrate to draw up his formal statement of

(*f*) *Calcraft v. Gibbs*, 4 Term Rep. 681.—5 Term Rep. 19. and cases there cited, post, Appendix, 1243. 1247.

(*g*) 6 Term Rep. 177. post, Appendix, 1250.

(*h*) *Rex v. Barrett*, 1 Salk. 383.—*Rex v. Dimpsey and others*, 2 Term Rep. 96.



conviction immediately, and even though he <sup>8. Convic-  
tions.</sup> as delivered a copy of it to the defendant, he may draw up a more formal one, and return it to a writ of certiorari, provided the conviction returned be warranted by the facts (*i*). And Lord Kenyon said, "If the magistrate has done no more than return the conviction in a more formal shape, instead of sending it up in the informal manner in which it was first drawn, and supposing the facts as they really happened, will warrant him in the return he has now made, the contrary of which is not imputed, I am of opinion that it was not only legal but laudable in him to do as he has done, and he would have done wrong had he acted otherwise." It is a matter of constant experience for magistrates to take minutes of their proceedings, without attending to the precise form of them, at the time when they pronounce their judgment, to serve as memorandums for them to draw up a more formal statement afterwards, to be returned to the sessions; and it is by no means unusual to draw up the conviction, in point of form, after the penalty has been levied under the judgment. Nor is there any legal objection to this method, provided the facts will warrant them in stating what they do. It is no answer to say, that a party convicted may be thereby induced to incur an unnecessary expense in suing out a certiorari to

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(*i*) *The King v. Barker*, 1 East. 186.



## 8. Convictions.

get rid of an informal conviction; for a mere informality in the manner of drawing up the conviction ought not to be the inducement for removing it into this Court; but some substantial defect in the justice and legality of the proceeding before the magistrate. As, however, the conviction ought to be returned to the sessions, the magistrate should, within a reasonable time, draw up his formal conviction (*k*)."

Where a statute prescribes a particular form, it must be pursued, and any material variation would be fatal (*l*); and though a particular statute may give a concise form, yet, in filling up the blanks, the offence must be correctly stated (*m*). Several of the statutes relating to game direct a particular form of conviction; but for the most common offences, incurred by an unqualified person sporting contrary to 5 Ann. c. 14. there is no prescribed form.

Great accuracy is required in framing convictions under the game laws. Thus, in the case of the King v. Corden (*n*), the Court said "that a tight hand ought to be holden over these summary convictions, and it ought to appear to the Court that the justice has jurisdiction in the case. They ought to be kept to a proper degree of strictness, and not to be made arbitrarily and

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(*k*) 2 Term Rep. 285.

others, 6 East. 417.

(*l*) Goss v. Jackson, 2 Esp. Rep. 198.

(*n*) 4 Burr. 2279. post, Appendix, 1157.

(*m*) The King v. Neild and

without authority." So in the case of the Queen <sup>8. Convic-</sup> v. Whistler (*o*), and in the King v. Chandler (*p*),  
 Lord Holt said, "that in these summary proceedings the right of an Englishman, of being tried per pares suos, was taken away, and he was subjected to a new method of prosecution before a private jurisdiction, contrary to the ancient liberties of Englishmen, confirmed to them by Magna Charta, and that therefore the court was to construe them strictly so far as to see that the act was an offence within the act, and that the justices proceeded accordingly; but that mere form or formality is not required in these nor any other summary proceedings." But in the King v. Thomson (*q*) the principle of this rule was questioned by Mr. Justice Ashhurst, who said, "As to the principle drawn from the old cases, that the court will be astute in discovering defects in convictions before summary jurisdictions, there seems to be no reason for it. Whether it was expedient that those jurisdictions should have been erected was a matter for the consideration of the legislature; but, as long as they exist, we ought to go all reasonable lengths to support their determinations. Therefore in whatever light they may have formerly been viewed, yet the country are now convinced, that they derive considerable advantage from the exercise of the powers delegated to the jus-

(*o*) 2 Lord Raym. 842.      Appendix, 1001.

post, Appendix, 996.

(*q*) 2 Term Rep. 18. post,

(*p*) 1 Salk. 378. post, Ap.      Appendix, 1227.

## 8. Convictions.

tices of the peace ; and in modern times they have received every support from the courts of law." And in the *King v. Swallow* (*r*) Lord Kenyon said, " I by no means wish that magistrates in drawing up convictions should set all forms at nought ; but they ought not to be entangled in greater forms or ceremonies than the superior courts." In the *King v. Stone* (*s*), (in which we have seen the Court were equally divided upon the question, whether the informer should prove the negative, or the defendant the affirmative, with respect to his qualification,) Lord Kenyon said, " It is necessary for courts of justice to hold a strict hand over summary proceedings before magistrates, and I never will agree to relax any of the rules by which they have been bound. Their jurisdiction is of a limited nature, and they must shew that the party was brought within it." But Mr. Justice Grose, who was of the same opinion as Lord Kenyon on the principal point, said, " he should not attempt to vindicate all the doctrine that is to be found in the books with respect to summary proceedings before justices of the peace. There are certain technical rules laid down for their observance, which I cannot reconcile to the rules which regulate proceedings in other cases. I cannot say why there should be any distinction between the mode of proof in a proceeding of this sort and in an action on the game laws,

(*r*) 8 Term Rep. 284. post,  
Appendix, 1270.

(*s*) 1 East. 639. post, Ap-  
pendix, 1288.



where, I believe, no negative proof is ever given by the prosecutor of the want of qualification in the defendant, but it rests upon him to shew his qualification. On looking, however, into the books, one finds that distinctions have been made between them, and that certain technical rules have been established for regulating proceedings on convictions which cannot now be overthrown without manifest confusion." And Lawrence, J. and Le Blanc, J. were of opinion that there are not any different rules of evidence, in case of proceedings before magistrates, from those which apply to actions in the courts above.

8. Convictions.

We will now consider more particularly the different requisites and *parts* of a conviction under the Game Laws.

Particular parts of conviction.

The precedent of a conviction for keeping a greyhound on the Statute 5 Ann. c. 14. in Burn's Justice (*t*), in its present form, has been so frequently adopted, that however defective it may in reality be, it may now be safely followed. In the case of the King v. Pearce (*u*), Lord Ellenborough said, "All the arguments against this form of conviction were discussed and considered in the King v. Thompson, and though the Court disapproved of it, still they held themselves bound to support it. The point, therefore, having been decided again and again, we cannot have it discussed any more." But Le Blanc, J. said, "If a magistrate endeavour to shelter himself from detection, by

(*t*) 2 Vol. tit. Game, 473. pendix, 1343.

(*u*) 9 East. 358. post, Ap-



## 8. Convictions.

merely stating the fact of the offence in the terms of the act of parliament, as if it were the legal effect of the evidence, when the evidence itself would not warrant the conclusion, he subjects himself to a criminal information, on a proper case being laid before the Court. As, however, it appears that Lord Kenyon regretted that he ever acquiesced in sanctioning that precedent (*x*), and the Court have recommended magistrates to state the evidence adduced before them more fully (*y*), it is advisable to frame the conviction in many respects different to that form which is usually adopted.

The conviction usually states the *county*, in the margin, for which the justice is a magistrate, and within which the offence was committed, and then commences with a memorandum of the informer's having, at such a time and place, come before the magistrate, he then being a justice assigned to keep the peace in and for the same county, and laid the information before him. It must expressly appear, that the magistrate was a justice of peace for the county in which the offence was committed, and that the informer laid the information before the magistrate in such county (*z*), and the county should be named in the body, or that in the margin expressly referred to (*a*).

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- (*x*) Post, Appen. 1285. n. a. Appendix, 1038.—The King v. Chip, 2 Strange. 711.  
 (*y*) See the cases cited in v. Chip, 2 Strange. 711. post, Appendix, 1048.—The King v. Swallow, 8 Term Rep. 284. post, Appendix, 1269.  
 358. post, Appendix, 1343.  
 (*a*) Sanders's case, 1 Saund. 263. n. 5. post, Appendix, 944. 947.—The King v. Johnson, 1 Strange. 261. post, Laws, 144.  
 (*b*) 1 Saund. 308. n. 1.—2 East. 66.—2 Nolan's Poor

The *time* mentioned at the top of the conviction and the date at the bottom do not appear to be material, and when repugnant may be rejected as surplusage, if the time of making the conviction appear on any other part of the instrument (c); but if it do not so appear a mistake would be fatal (d). The form in Burn's Justice (e), states in the present tense that the informer "cometh" before the justice, but it may be in the past tense, and which seems most correct (f).

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The conviction then sets forth the *information* verbatim to the end, and then states the *summons* and the defendant's *appearance*, and his assertion that he is *not guilty* of the offence.

We have already considered the form of the *information* when laid in writing; if it has been framed incorrectly, and at any time before the hearing the informer charges an offence to have been committed in substance contrary to the Game Laws, the magistrate may in his conviction state it more formally than it was laid (g).

If it be stated that the defendant appeared before the magistrate at the hearing of the information, that will dispense with the necessity of stating that he was duly summoned (h).

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- (c) The King v. Picton, 2 King v. Picton, 2 East. 195. East. 195. post, Appendix, 1303.  
 (d) The King v. Kent, 2 v. Barker, 1 East. 186.  
 (e) 2 Vol. tit. Game, 474.  
 (f) 1 Term Rep. 320. The

- (g) Ante, 204, 5. The King v. Stone, 1 East. 639. post, Appendix, 1281 and 941.  
 (h) Ante, 197. The King

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The conviction then states the *evidence* adduced on the part of the informer and of the defendant, in case he offers any, that on the part of the informer should be shewn to have been given in the defendant's presence (*i*). But it has been decided (*k*), that if it appear to have been given on the same day, the Court will intend that the evidence was given in the defendant's presence, even though it be stated that the appearance was at A. and that the evidence was given at B. It must appear from the conviction that the witnesses were sworn, but it is not necessary to state that the magistrate had jurisdiction to administer the oath (*l*).

With respect to the mode of stating the evidence, though the Court strongly recommends magistrates to state the particular evidence of the fact, on which their judgment is founded, and not merely the legal effect of it in the words of the statute, as that the defendant "kept and used a gun to kill and destroy the game;" yet a conviction in this latter form is valid in law, though if the magistrate were wilfully to draw a false conclusion from the evidence adduced, the Court of King's Bench would, upon a certiorari, quash the conviction, and probably grant an in-

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(*i*) Post, Appendix, 1285. n. a. The precedent in Burn, which omitted this statement is altered in the recent editions.

(*k*) The King v. Swallow, 8 Term Rep. 284. post, Ap-

pendix, 1268.

(*l*) The King v. Corden, 4 Burr. 2279. post, Appendix, 1157.—The King v. Picton, 2 East. 195. post, Appendix, 1303.

formation against him (*n*). The courts, how-<sup>3. Convic-</sup>  
 ever, so much disapprove of convictions which<sup>tions.</sup>  
 do not state the particular evidence, that it is  
 advisable in practice to state it (*n*); and if the  
 evidence stated tend to prove the offence, the  
 Court of King's Bench will not examine further,  
 and see whether the conclusion drawn by the  
 magistrate be or be not an inevitable conclusion  
 from the evidence (*o*). If the offence were  
 the keeping or using a gun, it must be shewn  
 that it was kept or used to kill and destroy the  
 game (*p*). But if the conviction be for keeping  
 a lurcher or greyhound, &c. particularly enu-  
 merated in 5 Ann. c. 14. as the mere keeping is  
*primâ facie* unlawful, it might suffice without  
 shewing the purpose for which it was kept (*q*).  
 The name of the witness should be stated, in  
 order that it may appear that he was not the in-  
 former (*r*). When the defendant confesses the  
 charge it is not necessary to shew that the  
 offence was proved upon oath; and where the  
 whole charge is confessed, it seems to be suffi-  
 cient to state in the conviction merely the infor-  
 mation, the defendant's appearance, his confession,  
 and the adjudication (*s*).

(*m*) The King v. Pearce, Term Rep. 177. post, Appendix, 1250.—8 Term Rep. 588. post, Appendix, 493.

(*n*) The King v. Clark, 8 Term Rep. 220. post, Appendix, 1267. — The King v. Lovett, 7 Term Rep. 152.

post, Appendix, 1256. n. b.

(*o*) The King v. Davis, 6

(*p*) Rex v. Thomson, 2 Term Rep. 18. post, Appendix, 1225.

(*q*) Ante, 83, 84.

(*r*) Post, Appendix, 912.

(*s*) Post, Appendix, 941, 2.



8. Convic-  
tions.

With respect to the *want of qualification*, we have already seen, that in the last case upon this subject the Court of King's Bench was equally divided upon the question, whether the *informer* must adduce negative evidence of the qualification (*t*). The latter opinion seems to be, that the onus probandi lies upon the defendant (*u*). We have seen, however, that it is advisable for the informer to adduce such presumptive proof, as it may be in his power to offer, and such evidence should at least be shewn in the conviction, with a statement by the witness that he verily believes that the defendant is not in any way qualified by law, enumerating the qualifications as in the precedent in Burn's Justice (*x*), it may be advisable, when the facts will warrant it, to follow that form. In negating the qualifications in the conviction, it should expressly appear that the defendant was not qualified at the time of his keeping or using the dog or engine (*y*).

After stating the evidence for the informer, the conviction states that the defendant was *called upon for his defence*, and that he either gives no excuse or evidence, or if he do adduce any setting it forth (*z*); and then follows the *adjudication* (*a*). It is said that the adjudication

(*t*) Ante, 201.—Rex v. Stone, 1 East. 639. post, Appendix, 1278.

(*u*) Post, Appendix, 941.—Selwyn's Ni. Pri. 914. See also 3 East. 197, 8. 200.

(*x*) 2 Vol. 475.

(*y*) Post, Appendix, 943. n. 2.

(*z*) See the form in Rex v. Clark, 8 Term Rep. 220. post, Appendix, 1265, 1266.

(*a*) See the form, 2 Burn's Justice, 476.

should negative every qualification, as well as state the fact of the dog or gun having been kept or used for the destruction of game (*b*). But in the *King v. Stone*, the Court were equally divided upon the question, whether the negative of the qualifications must be repeated in the adjudicatory part of the conviction, or whether it be not sufficient to convict the defendant "of the offence aforesaid," referring to the previous part of the conviction, which sets forth the information in which such qualifications were specifically negated. In cases where the facts will justify it, the safer course is to follow the precedent in *Burn's Justice* (*c*), which negatives every particular qualification. But it seems to have been considered on all hands, not to be necessary to negative the inferred or argumentative qualification to be collected from 5 Ann. c. 14. but not mentioned in the 22 and 23 C. 2. c. 25 (*d*).

The defendant, we have seen, may be convicted of several offences in the same conviction; in which case it is sufficient to state that he is convicted of the several offences aforesaid (*e*). The adjudication should bring the offence within the meaning of the statute, as that the defendant did keep a certain greyhound to kill and

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(*b*) Post, Appendix, 941.— 1115.; but see the *Queen v. The King v. Jarvis*, 1 Burr. Matthews, 10 Mod. 26. post, 148. post, Appendix, 1115. Appendix, 1010.

—The *King v. Stone*, 1 East. (*e*) The *King v. Swallow*, 639. post, Appendix, 1278. 8 Term Rep. 284. post, Appendix, 1268.—The *Queen v.*

(*c*) 2 Vol. 476.

(*d*) *Rex v. Jarvis*, 1 Burr. Matthews, 10 Mod. 26. post, 148. post, Appendix, 1111. Appendix, 1010.

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destroy the game of England, but it will suffice to adjudge, that he kept a dog called a greyhound (*f*), though it would not suffice to say, that he kept a gun being an engine for the destruction of game, without also shewing that it was kept or used for that purpose. It is usual to conclude that the offence was committed contrary to the form of the Statute (*g*); but it was observed by Lord Holt, “that a conviction need not be laid *contra pacem*, for mere form or formality is not required in these or any other summary proceedings (*h*).”

Besides that part of the adjudication which convicts the offender, there must be a judgment of forfeiture, although the magistrate may have no discretion as to the nature of the judgment which he should give; and therefore in the *King v. Harris* (*i*), Lord Kenyon said, “I am clearly of opinion that the conviction cannot be supported for want of an adjudication. A conviction is in the nature of a verdict and judgment, and therefore it must be precise and certain, and the judgment is an essential point in every conviction, let the punishment be fixed or not. Where, however, a statute, upon which the conviction is founded, distributes the penalty in certain proportions, it is sufficient to state

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(*f*) *Rex v. Hartley*, Cald. 175. post, Appendix, 1178. *ler*, 1 Salk. 378. post, Appendix, 1001.

(*g*) *The King v. Blaney*, Andrews. 240. post, Appendix, 1076. (*i*) 7 Term Rep. 238. post, Appendix, 1256.; see also Appendix, 943. n. 3. 1002.

(*h*) *The King v. Chand.* 1054.

generally in the adjudication, that the penalty shall be distributed as the statute directs (*k*).<sup>3. Convictions.</sup> But where the statute leaves it discretionary in the justices to distribute the penalty in such proportions as they shall direct, the distribution forms part of the judgment, and must therefore appear in the conviction itself (*l*).

Where an act gives power to a magistrate on a summary conviction to award the reasonable charges of taking a distress, he must ascertain the amount in the conviction; and an adjudication, that the defendant shall pay the reasonable charges of the levy, is bad (*m*).

The conviction should be under the hand and seal of the magistrate, but it is immaterial when he puts his hand and seal in point of form to it, provided it be done before it is returned to the sessions; and, as already observed, if the convicting magistrate give a proper date to the time of the conviction upon the face of it, and afterwards an impossible date to the time, when he set his hand and seal to the conviction, the latter may be rejected as surplusage (*n*). The justice, however, ought, if required by the defendant, to give him a copy of the conviction, for it is a record, and he is entitled to it; and if he refuse it the defendant can only obtain it by removing the conviction by certiorari, in which case he will not

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(*k*) See the form 2 Burn's Justice, 477. post, Appendix, 943. (*m*) *Rex v. Symonds*, 1 East. 189.—*Rex v. Patchett*, 5 East. 339.

(*l*) *Rex v. Dempsey*, 2 Term Rep. 96. (*n*) *The King v. Picton*, 2 East. 195.



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be liable to pay costs upon affirmance of the conviction (*o*).

9. The execution.

9thly. With respect to the mode of levying the penalty or punishing the offender for the non-payment of it under the Game Laws; most of the statutes which give the penalties, at the same time point out the course of proceeding for the recovery of them. We may remember, that the most general statute, the 5 Ann. c. 14. directs the 5*l*. penalty to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of such justice or justices before whom the party was convicted, and that for want of such distress the offender or offenders shall be sent to the House of Correction for the space of three months for the first offence, and for any further offence four months. The 13 Geo. 3. c. 80. which makes it penal to kill game in the night-time, or on Sunday or on Christmas-day, contains a similar enactment, and a farther authority to the justices or justices to detain the offender until the return day of the distress, in order to see whether there be a sufficient distress, and if not, to commit him to the House of Correction. The 27 Geo. 2. c. 20. contains a general authority to sell all distresses taken under a justice's warrant, and to deduct the expenses; and the 33 Geo. 3. c. 55. authorises magistrates in another county to execute the distress warrant issued by one who convicted the offender.

The Stat. 5 Ann. requires that the warrant

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(*o*) *Rex v. Midlam*, 3 Burr. 1720. post, Appendix, 1137.

shall be issued by the same magistrate who con- 9. The execu-  
 victed the offender, and the decisions accord with tion.  
 this regulation (*p*). The magistrate must first  
 endeavour to distrain upon the parties goods,  
 and if he imprison him in the first instance,  
 when he might have distrained, it will be false  
 imprisonment (*q*). The goods taken under the  
 distress are not replevizable (*r*). If the re-  
 turn of the officer, that there is no distress, be  
 untrue, a second warrant may issue in the same  
 county (*s*), or the warrant be indorsed into  
 another. If there be no distress, or it be in-  
 sufficient, the offender is to be committed to the  
 House of Correction for three months for the  
 first offence, and the commitment must be abso-  
 lutely for three months, and not till he shall be  
 discharged by due course of law; nor can the  
 defendant redeem himself by paying the fine  
 after commitment, because the nature of the  
 punishment is then altered by the express words  
 of the statute, and the justices have executed  
 their authority, and have no power to take the  
 money; and on these grounds an offender who  
 had been committed till discharged by due course  
 of law, was discharged out of custody upon a  
 writ of habeas corpus (*t*). Under the before

(*p*) The King v. Ride, 2  
 Keb. 68. and 74. post, Ap-  
 pendix, 633.

(*q*) Hill v. Bateman, 2  
 Strange. 710. post, Appen-  
 dix, 1047.

(*r*) The King v. Birchett,  
 and others, 8 Mod. 209. post,

Appendix, 1046.

(*s*) The King v. Hawkins,  
 Fortescue. 272. post, Ap-  
 pendix, 1021.

(*t*) The Queen v. Green,  
 Gilbert. 231. — Fortescue,  
 274. post, Appendix, 1011.  
 1019.

9. The execution. mentioned Statute 13 Geo. 3. c. 80. s. 8. it has been held, that the order of the magistrate to detain the offender, till it be ascertained whether there be sufficient distress, may be by *parol* (u).

10. The appeal and recognizance to try it. 10thly. It appears to be a general rule, that there is no *appeal* from the conviction of a justice or justices of the peace to the sessions, so as to obtain a rehearing of the merits, unless an appeal be expressly given by the statute (v), and the general Statutes of the 5 Ann. c. 14. and the 9 Ann. c. 25 do not give any appeal. But there are some of the acts relating to game, and in particular the 22 and 23 C. 2. c. 25. and the 13 Geo. 3. c. 55 and 80. (y) which expressly give an appeal, requiring the defendant at the same time to enter into a *recognizance* before some justice of the peace, with one or two sufficient securities, as directed by the statute, and conditioned to try the appeal, giving notice to the informer of the intention to appeal, a certain specified time before the trial, and directing that the adjudication of the justices on the appeal shall be conclusive between the parties. Upon the latter statute it has been held, that a *recognizance* or surety taken for trying the appeal, and paying the penalty with costs on affirmance is bad, because it ought to have

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(u) *Still v. Walls and another*, 7 East. 533. post, Appendix, 1334.

(v) *The King v. Skone*, 6 East. 514.

(y) Post, Appendix, 637.

been to abide the order pursuing the words of the act (z). 10. The appeal, &c.

11thly. It is a general rule that a *certiorari* 11. Certiorari. always lies to remove a conviction, unless it be expressly taken away by statute, and though an act which gives an appeal to the sessions, directs that they shall hear and finally determine the matter, yet this does not take away the *certiorari*, even after such an appeal made and determined; and Lord Kenyon regretted that it was in any instance taken away (a). But some of the provisions of the Game Laws, and particularly the 13 Geo. 3. c. 80. s. 8., expressly prohibit the removal of a conviction by *certiorari* or by any other process. The 5 Ann. c. 14. which does not prohibit a *certiorari*, enacts, as we have seen, that no *certiorari* shall be allowed, unless the party convicted shall, before the allowance of the *certiorari*, become bound to the informer in 50% with sufficient securities, with condition to pay to the informer within fourteen days after such conviction or procedendo so granted, his full costs and charges, to be ascertained upon his oath, and that in default thereof it shall be lawful for the justice to proceed as if no *certiorari* had been awarded. The 5 Geo. 2. c. 19. s. 2. (b) contains a general regulation as to bonds to be given upon the removal of a conviction by *certiorari*.

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(z) The King v. Bellamy, Term Rep. 542.—4 Hawk. 3 Austr. 898. post, Appen. Pl. Cr. 144.  
lix, 1258.

(a) The King v. Jukes, 8 n. b. (b) Post, Appendix, 1262.



11. *Certiorari*. A bond of this nature must precisely follow the directions of the statute, or the writ of *certiorari* will be of no avail (*c.*)

If the conviction be affirmed the defendant will in general have to pay costs, unless he were compelled to remove it in consequence of the magistrate's refusal to give him a copy (*d.*). Upon the conviction appearing before the Court in the return to the writ of *certiorari*, there is no reinvestigation of the merits, and the Court only found their opinion upon the propriety of the conviction from what appears on the face of it (*e.*).

12. Execution upon affirmation and costs.

12thly. It appears to have been formerly considered, that where a statute directs that a penalty shall be levied by a justice, the Court cannot upon affirming the conviction issue execution, but must award a *procedendo* (*f.*). But in subsequent cases, it appears that the Court may issue a *levari facias*, or a *fieri facias*, and after a return of *nulla bona a capias ad satisfaciendum*, but if the prosecutor be dead, then his executors must issue a *scire facias* (*g.*).

(*c.*) *The King v. Dunn*, 8 Keble. 813. post, Appendix, Term Rep. 217. post, Appendix, 1262. 949.

(*d.*) *Rex v. Midlam*, 3 Carthew. 231. post, Appendix, Burr. 1720. post, Appendix, 1137. 976. — *The Queen v. Ford*, Lord Raym. 768. post, Appendix, 1000. — *The King v. Chandler*, 1 Salk. 378.

(*e.*) *The King v. Reason*, 6 Term Rep. 375.

(*f.*) *Gawdy v. Felton*, post, Appendix, 1002.

## CHAPTER IX.

OF THE PRIVATE REMEDIES FOR TRESPASSES  
IN PURSUIT OF GAME—NOTICES NOT TO  
TRESPASS—COSTS—PLEADINGS, &c.

IN considering the places particularly privileged for the protection of game, and the times when it may be taken, and the persons who are authorized to interfere to preserve it, we have already noticed several of the remedies afforded to private individuals for trespasses to their land. It will, however, now be proper to take a more particular view of these remedies, and of the course of proceeding to be observed in adopting them. The remedies are of two descriptions; *first*, those which are calculated rather to *prevent* than to punish; and *secondly*, those which operate as *punishments* upon the offender, and afford *compensation* to the party injured.

We have seen, that it is lawful to take a *bond* 1st. Means of PREVENTING destruction of game. or *other security* (a) from a party, stipulating that he will not sport, and that in case of any material breach of such contract, an action may be brought, and a court of equity will not relieve the defendant against the proceedings at

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(a) Antc, 30.

1st. Means of law, unless the bond has been made an undue  
 PREVENTING  
 destruction of use of (b). Lord Hardwicke appears to have  
 game.

thought, that in a bond of this nature the penalty ought to be considered as the measure of damages to be recovered, because otherwise a person would not be in a better condition who had such a bond, than he would have been without it (c). However to prevent any question upon this point under the Stat. 8 and 9 W. 3. c. 11. s. 8. it is advisable in a bond or contract of this nature expressly to declare, that a certain named sum of money should be considered as liquidated damages (d). In either case, however, as the action would be on the bond and not in trespass to the land, the plaintiff would be certain of obtaining full costs. In an action upon a bond conditioned that the defendant should not hunt in the plaintiff's warren, the defendant pleaded that he did not hunt, and the plaintiff replied that he did, but did not shew where the warren lay, so that there was no venue, and upon a demurrer for this defect judgment was given for the defendant (e).

In general *a court of equity* will not interfere to prevent trespasses in pursuit of game. In *Coulson v. White* (f), Lord Hardwicke said, "Every common trespass is not the foundation for an injunction in this Court, where it is only

(b) *Roy v. Duke of Beaufort*, 2 Atk. 190. post, Appendix, 1079.

(c) *Id. Ibid.*

(d) 13 East. 1. and 347, 8.

(e) *Bird v. West*, Sir T. Jones. 21. post, Appendix, 948.

(f) 3 Atk. 21. post, Appendix, 1093.

contingent and temporary, but if it continues so long as to become a nuisance, in such a case the Court will interfere and grant an injunction to restrain the person from committing it." In *Lord Tenham v. Herbert (g)*, Lord Hardwicke said, "undoubtedly there are some cases in which a man may, by a bill, to establish his right, and to be quieted in the possession of it, come into this Court first, and there are others where he ought first to establish his right at law. It is certain where a man sets up a general exclusive right, and where the persons who controvert it with him are very numerous, and he cannot, by one or two actions at law, quiet that right, he may come into this Court first, which is called a bill of peace, and the Court will direct an issue to determine the right as in disputes between lords of manors and their tenants, and between tenants of one manor and another, for in these cases there would be no end of bringing actions of trespass, since each action would determine only the particular right in question between the plaintiff and defendant."

1st. Means of  
PREVENTING  
destruction of  
game.

And in another case (*h*), where the plaintiff had filed such a bill, to which the defendant pleaded a right of fishery, and the plaintiff then indicted some persons acting under the authority of the

(*g*) 2 Atk. 483. post, Appendix, 1092.—Vid. et *The King v. Inhabitants of Radley*, Hardr. 437. post, Appendix, 934.—*The Mayor of*

*York v. Pilkington*, 9 Mod. 273. post, Appendix, 1089.

(*h*) *Mayor of York v. Pilkington and others*, 9 Mod. 273. post, Appendix, 1089.



1st. Means of defendants for fishing, there not appearing to  
 PREVENTING  
 destruction of  
 game. have been any particular outrage committed by them, the Chancellor made an order on the plaintiff to stay him from prosecuting the defendants or their agents, either by action or indictment, for exercising the right of fishing claimed by the defendants in their answer, until the hearing of the cause, or further order. In the before-mentioned case of *Lord Tenham v. Herbert*, Lord Hardwicke said, "as to the case of the *Corporation of York v. Sir Lionel Pilkington*, the plaintiffs there were in possession of the right of fishing upon the river Ouze for nine miles together, and had constantly exercised that right; and as this large jurisdiction entangled them with different lords of manors, it would have been endless for the Corporation to have brought actions at law. But where a question about a right of fishery is only between two lords of manors, neither of them can come into this Court till the right is first tried at law. Lord Tenham does not in this case charge any possession for the last 38 years, so that this is in the nature of an ejectment bill; the plaintiff says this piece of ground *aqua cooperta* belongs to him, Mr. Herbert insists it belongs to him, so that this may very properly be determined at law, as it is a mere single question to try the right between two persons, and it is not like the case of the *Corporation of York*, who must have gone all round the compass to come at their right at law.

With respect to the *remedies for trespasses* committed in pursuit of game, they are either at common law, or founded on particular statutes. Those of a criminal nature have already been considered. There are various ancient provisions relating to *actions* for trespasses in forests, parks, and other franchises, which are either repealed, or become obsolete, in consequence of modern statutes relating to deer and rabbits, and hunting in the night-time, having imposed pecuniary penalties recoverable before a Justice of the Peace. But as some of the old regulations are still in force, we will concisely examine them.

The Charta de Foresta (*i*) provided as to trespasses in *forests*, and taking the king's deer, the party should pay a grievous fine, or be imprisoned a year and a day. The Statute of Westminster the First (*k*) provides that for trespasses in *parks and ponds*, if any be attainted at the suit of the party, great and large amends shall be awarded according to the trespass, and the offender shall have three years imprisonment. But the punishment for killing a deer was altered by the 5 Eliz. c. 21. (*l*) which directs, that the party shall pay treble damages, and be imprisoned for three months, and the last Statute is expressly repealed, as far as relates to deer, by 16 Geo. 3. c. 30. s. 27. (*m*), which, together with the 42 Geo. 3.

2dly, Private remedies for injuries committed.

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(*i*) Post, Appendix, 355. Appendix, 725. 736. 782  
 (*k*) 3 Edw. 1. c. 20. post, 804. 807. 817. 826. 966.  
 Appendix, 357. See the decisions on this statute, post, (*l*) Post, Appendix, 408.  
 (*m*) Post, Appendix, 656.

2dly, Private remedies for injuries committed.

c. 107. (n) provide other remedies and punishments for taking deer, and injuring the fences of parks. And the Statute 11 H. 7. c. 17. s. 17. (o) gives a penalty of 10<sup>l</sup>. half to the party suing, and half to the occupier of any *private ground*, for trespasses in sporting upon his land. Since the modern regulations, the party injured usually proceeds for the penalty, or founds his action for the trespass in his chase, park, or free warren, at common law, in aid of which latter proceeding, the Statute 8 and 9 W. 3. c. 11. s. 4. gives full costs, however small the damages, if the judge upon the trial certifies that the trespass was wilful and malicious; and the 4 and 5 W. & M. provides, that if inferior tradesmen, apprentices, or other dissolute persons, shall hunt, hawk, fish, or fowl, he shall, for his wilful trespass, pay full costs, as well as damages, though he merely hunted without killing game (p). We will now consider the course of proceedings for trespasses in sporting in chases, parks, free warrens, and private grounds, at common law.

The notice not to trespass, and the costs of the action.

It is not essential to the support of an action, that any *notice* should have been given to the party not to trespass on the plaintiff's land in pursuit of game, or otherwise; for a person who is sporting over the land of another, cannot be considered guilty of an involuntary trespass, so

(n) Post, Appendix, 667.

(o) Post, Appendix, 379.

(p) Ante, 88 to 95.—Ben-net v. Talbois, 1 Lord Raym.

149. post, Appendix, 981.

—Shadow v. Painter, Carth.

424. post, Appendix, 983.

as to be protected either at common law, or by the statute which allows a plea of tender where a trespass has unintentionally been committed (*q*). But as the statute passed to prevent trifling and vexatious actions for trespasses to real property (*r*) enacts, "That the plaintiff shall not recover more costs than damages, unless he obtain a verdict for 40*s*. or the judge certify on the back of the record that the trespass was wilful and malicious (*s*), and such certificate will usually be granted, when it appears that the trespasses were committed after notice, it is advisable to give such notice before the trespasses intended to be proceeded for have been committed, unless it be certain that the party is an inferior tradesman, apprentice, or other dissolute person within the meaning of the 4 and 5 W. & M. c. 23. s. 10. in which case the plaintiff would be entitled to full costs without a certificate, however small the damages (*t*). Mr. J. Blackstone observes (*u*), "That every trespass is *wilful*, where the defendant has notice, and is especially forewarned not to come on the land; as every trespass is *malicious*, though the damage may not amount to forty shillings, where the intent of the defendant plainly appears to be to harass and distress the plaintiff: and accordingly, if it appeared on the trial, that the trespass, however trifling, was

The notice  
not to tres-  
pass, and the  
costs of the  
action.

(*q*) Beckwith v. Shoredike 570.

and another, 4 Burr. 2092.  
post, Appendix, 1145.—21  
Jac. 1. c. 15. s. 5.—Chitty  
on Pleading, 2nd edit. 2 vol.

(*r*) 22 Car. 2. c. 9.

(*s*) 8 & 9 W. 3. c. 11. s. 4.

(*t*) Ante, 88 to 95.

(*u*) 3 Bla. Com. 214.



The notice  
not to tres-  
pass, and the  
costs of the  
action.

committed after notice, and the jury gave less than forty shillings damages, it was formerly usual for the Judge to consider himself bound to certify that the trespass was wilful and malicious, in order to entitle the plaintiff to his full costs (1); and this even in a case where the notice had been general to all persons not to trespass upon the plaintiff's lands, and given four years before, and although the defendant was unacquainted with the boundaries of the plaintiff's estate, and endeavoured, by inquiries, to avoid committing a trespass (2). But the modern doctrine is, that the granting of a certificate upon this statute is discretionary in the Judge, before whom the trial is had, who may certify or not, according as it appears to his satisfaction under the circumstances proved, that the trespass was wilful and malicious (3). Hence it is advisable to serve an explicit notice, stating the boundaries of the estate, or the names of the closes, and not to proceed by action of trespass, unless there be clear evidence of wilful trespass committed under circumstances that will probably induce the judge to certify.

The notice may be personally served, or left at the usual place of abode of the party, which would afford a presumption that he received the notice (4); a verbal notice, however, to the same effect, would suffice. The notice should be given

(1) 6 Term Rep. 11.—7 Term Rep. 449.

(2) 6 Term Rep. 11.

(3) 3 East. 495.—Tidd's Prac. 4th edit. 870.

(4) 4 Term Rep. 464.

by the occupier of the land, and not by a landlord, who cannot, during the existence of the tenancy, support an action of trespass. A notice given by a gamekeeper would suffice as to lands or waste in the hands of the lord of the manor, because it will be presumed that he acted by the orders of his employer, it being within the general scope of his authority to warn persons off the manor who had no authority to sport there (*b*). The certificate required by this statute need not be granted at the trial of the cause (*c*).

The notice not to trespass, and the costs of the action.

We have seen that in trespass for hunting in a free warren, the plaintiff is entitled to full costs without a certificate, although the damages may be under forty shillings (*d*); and it appears from the same case, and from those which establish the local property in game *ratori soli*, that where game is started and killed on the same estate, full costs will be recoverable under a count for taking it, however small the damages (*e*).

In an action of trespass for hunting in a free chase, park, or free warren, it should, in order to entitle the plaintiff to full costs, be expressly stated in the declaration, that the defendant trespassed in those franchises (*f*), and as the owner

The declarations and other pleadings.

(*b*) Per *Ld. Ellenborough*, in *Good v. Watkins*, 3 East. 498.

(*c*) 1 Term Rep. 636.—6 Term Rep. 11.—7 Term Rep. 449.

(*d*) Ante, 21. *Ld. Dacre v. Tebb*, 2 Bla. Rep. 1151. post, Appendix, 1166.

(*e*) *Id. ibid.* ante, 8. and

Post, Appendix, 782.

(*f*) *Lord Dacre v. Tebb*, 2 Bla. Rep. 1151.—post, Appendix, 1166. post, Appendix, 708, 9.—*L'Abbé de Dieu v. T. S.* Year Book, 7 H. 6. post, Appendix, 731.—Year Book, 9 H. 6. p. 2. post, Appendix, 732.

The declarations and other pleadings.

has a property in the game therein *ratione privilegi*, the plaintiff may charge that the defendant hunted and killed *his* game (*g*). If the defendant were an inferior tradesman, apprentice, or other dissolute person within the meaning of the Statute 4 & 5 W. & M. c. 23. s. 10. then in order to recover full costs under that statute, it is advisable to declare, stating that the defendant was an inferior tradesman, in which case it seems not to be necessary to charge the trespass to have been committed contrary to the form of the statute (*h*). And though the declaration may describe the defendant to be a dissolute person, the plaintiff will be entitled to recover for the trespass at common law, though he may fail in proving that the defendant was such dissolute person (*i*).

In a declaration for trespassing and sporting on the waste of a manor, or on private grounds, it may also be stated, that the defendant on several days and times between such a day and such a day, entered the closes of the plaintiff, and there with dogs hunted and beat for game, and took *his* hares, partridges, &c.; for the occupier of land has a local property in game thereon *ratione loci*, and may therefore call them *his*

(*g*) Sutton v. Moody, 1 Lord Raym. 250. post, Appendix, 984. 1002.—Archbishop of Canterbury v. W. T. and others.—Year Book, 3 Hen. 6. p. 55. post, Appendix, 730.

(*h*) Bennet v. Talbois, 1

Ld. Raym. 149. post, Appendix, 981.—Shadow v. Painter, Carth. 424. post, Appendix, 983.

(*i*) Pallant v. Roll, 2 Bla. Rep. 900. post, Appendix, 1164.

game, when he charges, that they were taken on his land (*k*); and though usual, it does not appear to be absolutely necessary to mention the number of each particular kind of game, because the breaking the close is considered to be the principal ground and foundation of the action, and the taking of the game as only matter of aggravation (*l*). But a count in trespass (*m*), or trover (*n*), for taking the plaintiff's game, without stating that it was taken on his land, or that it was reclaimed, or dead, or in his actual possession, appears to be subject to a special demurrer, though the objection would be aided after verdict (*o*). This distinction proceeds on the general intendment of law, that game is, in its wild state, the property of no one, unless the contrary be shewn (*p*). It was on this ground that, in the *King v. Rough* (*q*), where the defendant had been convicted on an indictment for stealing a pheasant, value 40s. of the goods and chattels of

The declarations and other pleadings.

(*k*) *Sutton v. Moody*, 1 *dix*, 931.

*L. Raym.* 250.—3 *Salk.* 290. (*n*) *Lyster v. Home*, *Cro. Car.* 544. post, *Appendix*. 429.

*J.—Willes Rep.* 46. post, *Append.* 806.—*Child v. Greenhill*, *Cro. Car.* 553. post, *Append.* 931.—*Pollexfen v. Crispin*, 1 *Ventris.* 122.—2 *Keb.* 757. 765. post, *Appendix*, 947 to 949.

(*l*) 2 *Saund.* 74. n. 1.—2 *Salk.* 643.—3 *Wilson.* 292. *Chitty on Pleading*, 2nd edit. 2 Vol. 437. n. k.

(*m*) *Fines v. Spencer*, 2 *Dyer.* 306. post, *Appendix*, 820.—*Usher v. Bushnell*, *Sir T. Raym.* 16. post, *Appen-*

(*o*) *Vincent v. Lesney*, *Cro. Car.* 18. post, *Append.* 920. — *Usher v. Bushnell*, *Sir T. Raym.* 16. post, *Appendix*, 931.—*Pollexfen v. Crispin*, 1 *Vent.* 122.—2 *Keb.* 757. 765. post, *Appendix*, 947 to 949.

(*p*) *Vid.* notes a. b. c. f. and 2 *East. Pl. Cr.* 607. post, *Appendix*, 1176.

(*q*) 9 *East. Pl. Cr.* 607, post, *Appendix*, 1176.



The declarations and other pleadings.

H. S. all the judges, after much debate and difference of opinion, agreed that the conviction was bad; for in cases of larceny of animals *feræ naturæ*, the indictment must shew, that they were either dead, tame, or confined; otherwise they must be presumed to be in their original state, and that it is not sufficient to add “of the goods and chattels” of such an one.

Pleas and Replications.

In trespass for entering a chase, free warren, or park, the *general issue* is proper, when the defendant either denies the existence of the franchise or the fact of the trespass having been committed (*r*), *liberum tenementum* in the land is not a sufficient plea (*s*). In this, as well as in an action for hunting in private lands, a licence or other special matter of justification must be pleaded, and if the defendant has exceeded it, the plaintiff will recover under the common replication denying the licence (*t*).

In other respects the proceedings in an action for trespasses committed in the pursuit of game, are regulated by the same principles and rules which prevail in other actions of trespass *quare clausum fregit*.

(*r*) Post, Appendix, 708, 9. 736.

(*s*) Year Book, 10 Hen. 7. p. 21. post, Appendix, 787, 8. Id. 730. 735, 6.—Smith

v. Kempe, 2 Salk. 637. post, Append. 975.—Year Book,

35 Hen. 6. page 55. post, Appendix, 753. 803.

(*t*) 11 East. 451.

## CHAPTER X.

## OF GAME CERTIFICATES.

**T**HE former regulations relative to game certificates were very dissimilar to the present. The certificate was taken out from the clerk of the peace, and was regulated by the *stamp* acts, and though the duties and the penalties for sporting without a certificate were the same in amount as the present, they were recoverable not only by action, but also by information before a magistrate. By the last act (*a*), the duties on game certificates are placed under the management of the commissioners of assessed taxes, and the party, before he sports, must pay the sum of three guineas, or one guinea (if he be a menial game-keeper), to the collector of the assessed taxes in his district, who is to sign a receipt for the same, on payment of 1*s.* for his trouble, which receipt is to be delivered to the clerk of the commissioners of the taxes, acting for the district, who is to give a certificate in the form directed by the act.

Every person using any dog, gun, net, or other engine for the purpose of taking or killing of game, or any woodcock, snipe, quail, or

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(*a*) 48 Geo. 3. c. 55. post, Append. 679.

landrail, or any rabbits in any part of Great Britain, if he sport for himself, or otherwise than as a *menial* gamekeeper, must annually pay this duty of three guineas; and every gamekeeper, deputed as servant to a lord or lady of a manor, is charged with the annual sum of one guinea.

This act however contains two exceptions, the first as to the taking *woodcocks* and *snipes* with *nets* and *springs*; and the second the taking or destroying of *rabbits* in warrens, or in any enclosed ground, or by any person in lands in his or her occupation, either by himself or herself, or by his or her direction or command.

Gamekeepers, on whose behalf a receipt and certificate have been obtained by their masters, are not required to obtain a certificate for themselves; but it is provided by the 7th section, that the certificate shall be void, on the revocation of the deputation; but the same may be renewed for the remainder of the year, without any duty or fee on behalf of the new gamekeeper by indorsing on such certificate the name and place of abode of the person to whom such last-mentioned deputation or appointment had been granted.

The statute then provides that no unqualified persons shall be protected by the certificate from the penalties on unqualified persons for sporting, and that the gamekeeper's certificate shall not operate as a protection beyond the limits of the manor for which he is appointed.

This statute is more extensive than the former regulations with respect to the persons who are authorized to *demand the production of the certificate*. The 10th section (b) enacts, "that if any person shall be found using any dog, gun, or other engine in Great Britain for any of the before-mentioned purposes, in respect of which the party is chargeable, by any assessor, collector, or commissioner, or lord of a manor, or surveyor of taxes, or owner or occupier of land within their respective districts, or by any person duly assessed to these duties, to demand from such person the production of his certificate, which the statute directs him to produce and to permit the party to read it and take a copy of it. The statute then directs, that in case no certificate shall be produced, the party requiring shall forthwith declare to the other his christian and surname, and place of residence, and the parish or place, if any, where he has obtained his certificate; and then if the other party shall wilfully refuse to produce and shew his certificate, or give the party requiring his name and place of residence, and the place where he has paid the duty, or shall produce any false certificate or give false name, &c. he shall forfeit 20*l*."

The 12th section also subjects every person, who sports without having obtained such certificate, to the penalty of 20*l*. and the duty of three guineas, which penalties are recoverable as pointed out by the 43 Geo. 3. c 99. There is no



reported case upon this act, but the decisions upon the repealed Statute 25 Geo. 3. c. 50. will on principle be applicable, and in *Molton v. Rogers* (c), it was held on that statute that the penalty for not producing the certificate does not attach by the refusal to produce it, unless the party also refuse on request to tell his christian and surname and the place of his residence, and in the same case it was held that an unqualified and unlicenced person may join in the sport with a person lawfully entitled to kill game, if he is not himself a principal or using his own dogs. Upon the clause of that act also giving treble costs, it was held in *Smith v. Wallace* (d) that it only extends to the protection of persons acting in pursuance of the act, or under colour of it, in order to carry it into execution, and not to persons sued for penalties and who may succeed in establishing a defence.

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(c) 4 Esp. Rep. 215. post, Appendix, 1322.

(d) 1 Term Rep. 252. post, Appendix, 1217.

## PART II.

# OF THE LAW RELATING TO PUBLIC AND PRIVATE FISHERIES.

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## CHAPTER I.

### OF PUBLIC FISHERIES.

**FISHERIES** are *public* or *private*. Public are either fisheries in distant seas in which all nations have a right to fish, and some of which are encouraged by act of parliament, or they are fisheries within the four seas, or within public navigable rivers in which all British subjects have a right to fish, in exclusion of other nations, subject in some particular instances to modifications by acts of parliament, or the prescriptive rights of individuals. *Private* fisheries are those in which some particular persons are entitled to an exclusive right of fishing.

Public fisheries, as a matter of national concern, are of great importance, since they are not only the source of considerable provisions for the population of the country, but constitute a

Public fisheries.

Public fisheries.

nursery for our seamen. We therefore find that the common law has, in various instances, particularly protected such fisheries, and that a great variety of statutes have been passed to regulate them. As, however, the principal object of this treatise is to consider the private rights of persons in game and fish, we will only concisely consider the regulations relating to public fisheries, and those principally of a general nature.

1st, Fisheries in distant seas.

The natural right of all nations to take fish in the *sea* may be restrained or regulated by treaty, or by customary law. An instance of the latter occurred in the case of *Fennings v. Lord Grenville* (a), from which it appears that, by the custom of the whale fishery, amongst the Gallipagos islands, he who strikes a whale with a loose harpoon is entitled to receive half the produce from him who kills it; and that, by the custom of the Greenland whale fishery, unless the person who strikes a fish continues his power over it till he has got possession of it, any other who kills it acquires the entire property. In that case, Mr. Justice Chambre laid it down, "That there must of necessity be a custom in these things to govern the subjects of England, as well amongst themselves as in their intercourse with subjects of other countries. The usage in the Greenland fishery is held to be obligatory, not only as between British subjects, but also as between them and all other nations. I remember the first case upon that usage, which

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(a) 1 Taunt. 241.

was tried before Lord Mansfield, who was clear <sup>1st, Fisheries</sup> that every person was bound by it, and said, <sup>in distant</sup> seas, that were it not for such a custom, there must be a sort of warfare perpetually subsisting between the adventurers; and he held it strongly binding, from the circumstance of its extending to different nations. The same necessity must prevail in the South Seas, (although the fishery has not been so long in use,) in order to regulate our intercourse with the French, Americans, and others who resort thither."

By several Acts of Parliament, companies and societies have been established, and invested with certain privileges, with a view to encourage fisheries in distant seas; and bounties are given on the importation of fish, and foreigners are prohibited from bringing fish of particular descriptions to a British market. But these not being within the object of this treatise, will not here be further considered (*b*).

The general immunity, by virtue of which all nations may fish in the sea, is confined to those <sup>2ndly, Four</sup> seas and na- <sup>vigable rivers.</sup> seas which have not been appropriated by a particular state, or are not within a certain distance from its shores: for although, by the law of nature, the sea is in general open to all mankind, the right of fishing in ports and rivers, or even on the coasts of an independent state, could

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(*b*) See the statutes relative to British fisheries, post, Appendix, 523. 619, 620. 633. 666. Reeves's Law of Shipping, passim. Smollet's Hist. England. And see case on the Southern Whale Act, post, Appendix, 1250.



2ndly, Four seas and navigable rivers. never have been considered or intended to be admitted as an universal right, nor could a foreign power send vessels to navigate within the limits of such maritime districts, or take fresh running water on the shore, without permission expressed or implied; neither can the interests of maritime states admit a promiscuous liberty to strangers to fish or navigate within their seas, since it might affect both their personal security and personal sustentation. Their personal security would be endangered by the facility afforded to foreign powers to make inimical incursions upon them; and their food might be lessened by the exhaustion of their fisheries; for, though fishing is abundant in the sea, it is manifest that it may in part be exhausted, especially if all nations should desire such a right and liberty near the coasts of any particular country; and as it is very usual that some particular kind of fish, or perhaps some more precious commodity, as pearls, coral, amber, or the like, are to be found only in one part of the seas, and that of no considerable extent, the congregation of many people to that part must necessarily prejudice the people of the neighbouring shore. In this case, then, there is no reason why the borderers should not rather challenge to themselves this happiness of a wealthy shore, or sea, than those who are seated at a distance from it (c). And, according to Bodinus, by a kind of common right enjoyed

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(c) Puffendorf, lib. 4. c. 5. s. 7.

by all princes of maritime countries, the particular sovereign may command and controul those who approach within sixty miles of his shore (*d*). And most of the modern writers upon the law of nations agree that each state is mistress of the sea on all sides within cannon shot of her coasts, which is explained to mean three leagues; and for that reason, a vessel taken within cannon shot of a neutral fortress, is not a lawful prize (*e*). Those parts of the open waters which encompass the four sides of the British islands, and are therefore known by the name of the British Seas, have long been acknowledged by most nations as her lawful possession, and exempt from the intrusion of other nations (*f*).

All the writers on the common law of England agree that the supreme dominion or jurisdiction of the British Seas belongs to the sovereign, as the head and representative of his people, and that the free and universal right of fishing and navigation in such seas, ports, arms of the sea, and navigable rivers, exerciseable under his jurisdiction, belongs to British subjects in general (*g*). The right of fishing in these never was vested in the crown exclusively, and of course is not to be considered as a legal franchise; as a public right belonging to the people, it prima

(*d*) Schulte's Aq. Rights, 3, 4. Bodinus de Rep. lib. 1. c. ult.

(*e*) Vattel. 128, 9.—Martens. 160.—2 Wooddeson. 443.

(*f*) Selden. 182.—Martens. 161.—Molloy. 113.—Com. Dig. tit. Prerogative, B. 1. D. 50.

(*g*) Schulte's Aq. Rights, 5.

2ndly, Four  
seas and na-  
vigable rivers.

facie vests in the crown; but such legal invest-  
ment does not diminish the right of the subject,  
and is merely reposed in the crown for the sake  
of regulation and government (*h*). The king is,  
indeed, entitled to a designated species of fish de-  
nominated royal fish, such as whales and stur-  
geons, which are royal property, and which con-  
stitute a part of the prerogative particularly pro-  
tected by the Statute Prerogativa Regis (*i*), and  
are susceptible of delegation, and in the hands  
of a subject are a franchise. But the privilege  
of fishing for other fish (*k*), and of searching for  
shell-fish on the shore of the sea (*l*), belongs to  
all subjects of common right; and hence it has  
been decided, that a prescription to fish in the  
sea is idle and void (*m*). And this right of the  
subject cannot be affected by a grant from the  
king at the present day (*n*); though by prescrip-  
tion on immemorial usage, one or more particu-  
lar subjects may have an exclusive right to a sever-  
al fishery in a navigable stream or arm of the  
sea (*o*). The nature of this right will hereafter

(*h*) Schulte's Aq. Rights, 15.

(*i*) 17 Ed. 2. st. 1. post, Appendix, 363.

(*k*) Schulte's Aq. Rights, 17.—Carter v. Murcot, 4 Burr. 2162. post, Appendix, 1146.

(*l*) Bagott v. Orr, 2 Bos. & Pul. 472. post, Appendix, 1293.

(*m*) Ward v. Creswell, Willes. 265. post, Appendix, 085.

(*n*) Warren v. Matthews, 6 Mod. 73.—1 Salk. 357. post, Appendix, 1004.—2 Bla. Com. 39. But see Com. Dig. Prerogative, D. 50.

(*o*) Schulte's Aq. Rights, 68 to 85. and 101.—Carter v. Murcot, 4 Burr. 2162. post, Appendix, 1146. The Piscary of Baune case, Davies's Rep. 55. post, Appendix, 858.—Mayor of Oxford v. Richardson, 4 Term Rep.

be considered more particularly, when we inquire into the private rights of fishing. If an individual have a peculiar right of fishery in a navigable river, he must so exercise it as not to injure the navigation (*p*). Tithe is not payable for fish taken in navigable rivers, or in the sea, unless by special custom (*q*). A custom to dry nets upon the land of another has been considered valid (*r*). But it seems doubtful whether there be a *primâ facie* right in all subjects to take fish-shells on the sea shore between high and low water-mark (*s*). The fisheries in the sea and ports and navigable rivers, being of such great national importance, we find numerous statutes for the regulation and preservation of them, the provisions of which we will examine in the following order, and as they relate to,

I Regulations of a general nature, relating to,  
1st, Weirs and other obstructions;

- 437.—2 Hen. Bla. 182. (H 14 & 16.) Anon. 6 Mod. post, Appendix, 1233 to 1243.—Baggot v. Orr, 2 Bos. & Pul. 472. post, Appendix, 1293.—Rogers v. Allen, 1 Camp. 309. post, Appendix, 1349.—Ld. Fitzwalter's case, 1 Mod. 106. post, Appendix, 950, 951.  
(*p*) 1 Camp. 57. post, Appendix, 1356.  
(*q*) Dawes v. Huddleston, Cro. Car. 339. post, Appendix, 927.—Anonymous, Cro. Car. 264. post, Appendix, 25.—Com. Dig. Dimes,
223. post, Appendix, 1005. Holland v. Neale, Noy. Rep. 108. Appendix, 849.—Earl Scarborough v. Hunter, Bunbury. 43. post, Appendix, 1037.—Gwavas v. Kelynach, Bunbury. 256. post, Appendix, 1052.—The King v. Carylton, 3 Term Rep. 385. post, Appendix, 1229.  
(*r*) 2 Hen. Bla. 395.  
(*s*) Bagott v. Orr, 2 Bos. & Pul. 472. post, Appendix, 1293.



2ndly, Four  
seas and na-  
vigable rivers.

2ndly, Prohibitions from taking spawn,  
fry, and young fish ;

3rdly, The time of the year when fish may  
be taken ;

4thly, The mode of taking them, and size of  
nets ;

5thly, The importation, buying, and selling  
of fish ;

6thly, Persons authorized to interfere.

## II. Particular regulations relating to,

1st, Oyster fisheries ;

2ndly, Thames and Medway ;

3rdly, Severn and other rivers ;

and under each of these heads will be pointed  
out the penalties for the infraction of the law, and  
the mode of recovering them.

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## I. REGULATIONS OF A GENERAL NATURE.

1. Weirs, and  
other ob-  
structions.

And first, with respect to *weirs and other ob-  
structions*. It was enacted by Magna Charta(*1*),  
“ That no banks shall be defended but such as  
were in defence in the time of king Henry, our  
grandfather, by the same places and the same  
bounds as they were wont to be in his time ; and  
that all weirs from thenceforth should be utterly  
put down by Thames and Medway, and through  
all England, except by the sea coast.” Upon

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(*1*) Post, Appendix, 351.

this statute, Lord Coke observes (*u*), “ That it means that no owner of the banks of rivers shall so appropriate or keep the rivers several to him to defend, or bar others either to have passage or fish there, otherwise than they were used in the reign of Henry II. ;” and quotes the Mirror, to shew that this statute is out of use. However, in the late case of *Weld v. Hornby* (*x*), it was decided that the enhancing, straitening, or enlarging of an ancient weir, as well as the new erection of one, for the purpose of stopping fish, in their passage up a river, is a public nuisance, by *Magna Charta*, c. 23. and by 12 Ed. 4. c. 7.; and that the right to convert a brush wood into a stone weir, is not evidenced by shewing that 40 years ago two thirds of it had been so converted without interruption; and that the action for the injury having been brought within 20 years after the remaining third part was so converted, it was sustainable. And Lord Ellenborough said, “ The right set up by the defendant to have a stone weir, is plainly founded upon encroachment. The erection of weirs across rivers, was reprobated in the earliest periods of our law. They were considered as public nuisances. The words of *Magna Charta* are, “ that all weirs from henceforth shall be utterly pulled down by Thames and Medway, and through all England, &c.” And this was followed by the

1. Weirs and other obstructions.

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(*u*) 2 Inst. 30. and 38.      pendix, 1325.

(*x*) 7 East. 195. post, Ap-

1. Weirs and other obstructions.

subsequent acts, treating them as public nuisances, forbidding the erection of new ones, and the enhancing, straitening, or enlarging of those which had aforetime existed. I remember that the stells erected in the river Eden, by the late Lord Lonsdale and the corporation of Carlisle, whereby all the fish were stopped in their passage up the river, were pronounced in this Court, upon a motion for a new trial, to be illegal, and a public nuisance. And however 20 years acquiescence may bind parties whose private rights only are affected; yet the public have an interest in the suppression of public nuisances, though of longer standing."

The 2 Hen. 6. c. 15. (v) prohibits the standing of nets and engines called trinks, and all other nets, which be and were wont to be fastened and hanged continually, day and night, by a certain time in the year, to great posts, boats and anchors, overthwart the Thames, and other rivers, which are declared to be destructive of the brood of fish, and a disturbance of the common passage of vessels, and subjects the offender to the penalty of 5*l.* forfeiture to the king, with a saving of individuals title and inheritance in their said fishings, and a permission to fishers to draw and pull their nets by hand as theretofore. Upon this statute, it appears that the proper course of proceeding is by information, and that the

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(y) Post, Appendix, 373.

fastening of nets, as long as the tide serves, is an offence against the statute (z).

1. Weirs and other obstructions.

The 3 J. 1. c. 12. (a), with a view to preserve the brood of sea fish, enacts, "That every person who shall erect or set up any new weir or weirs along the sea-shore, or in any haven, harbour, or creek, or within five miles of the mouth of any haven or creek, shall forfeit 10*l.*, half to the king and half to the informer; recoverable as therein mentioned.

The erection of weirs, &c. across the Severn, and several other rivers, is particularly provided against by the 1 Geo. 1. st. 2. c. 18. s. 14. (b) which points out a summary mode of recovering the penalty.

2ndly. There are several regulations prohibiting the taking of spawn, fry, or young fish. Thus, by the Statute of Westminster the Second (c), the taking of young salmon, by nets or other engines, at mill-pools, from the midst of April to the Nativity of St. John the Baptist, is prohibited; and it directs that conservators shall be appointed for rivers, and that, for the first trespass, the offenders shall be punished by the burning of their nets and engines; for the second, they shall be imprisoned a quarter of a year; for the third, a whole year.

2ndly, Prohibitions against the taking spawn, fry, and young fish.

(z) 12 Coke. 89. post, Appendix, 865. See also 3 Burr. 1768. post, Appendix, 1140.

(b) Post, Appendix, 500.

(c) 13 Ed. 1. st. 3. post, Appendix, 358. See comments on this statute, 2 Inst.

(a) Post, Appendix, 425. 478.



Andly, Pro-  
hibitions  
against the  
taking spawn,  
fry, and  
young fish.

By the 13 R. 2. c. 19. (*d*) all persons are prohibited from putting in any waters, at any time of the year, any nets called stalkers, or other nets or engines, by which the fry or the breed of salmon, lampreys, or other fish, may be taken, subject to the same penalties as in the last-mentioned statute. And the 13 R. 2. c. 9. (*e*) directs, that justices of the peace shall be the conservators for carrying the before-mentioned statute into execution.

The 1 Eliz. c. 17. (*f*) enacts, "That no person shall, by any device or means, take and kill any young brood, spawn, or fry, of any fish, in any floodgate, pipe at the tail of a mill, weir, or in any straits, streams, brooks, rivers, fresh or salt, nor shall take and kill any salmons, or trouts, not being in season, being kepper salmons, or kepper trouts, or shedder salmons, or shedder trouts, or any pike or pikerel less than ten inches in length, salmon less than 16 inches, trout less than 8 inches, or barbel less than 12 inches; and, with intent to preserve young fry, brood, or spawn, prohibits any person from fishing with any net or engine, except a net or tramell, whereof every mesh, or mash, be two inches and a half broad, angling excepted, with a general exception as to the taking of smelts, loaches, minners, gudgeons, and eels, and subjects the offender to the forfeiture of 20s. for every offence,

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(*d*) Post Appendix, 369.

(*e*) Post, Appendix, 370.

(*f*) Post, Appendix, 403.

and the fish taken, and the unlawful nets and engines used (*g*).

The 3 J. I. c. 12. (*h*) enacts, "That every person who shall willingly take, destroy, or spoil any spawn, fry, or brood of any sea fish, in any weir, or other engine or device whatsoever, shall forfeit 10*l.*, half to the king and half to the informer."

2ndly, Prohibitions against the taking spawn, fry, and young fish.

The 1 Geo. I. st. 2. c. 18. s. 7. (*i*) points out the size of certain fish that may be sold, and subjects the person selling or offering to sale or exchange any unsizeable fish, to the forfeiture of such fish and 20*s.*, half to the informer and half to the poor of the parish.

By the 22 Geo. 2. c. 49. s. 21. (*k*) after reciting, "That by reason of the enactment against under-sized fish being sold, several of such fish are, when taken with a hook, thrown again into the sea, and die," enacts, "That fish under such dimensions as are prohibited by the before-mentioned act, may be exposed to sale, or exchanged for any other goods, provided such fish are taken with a hook, and so not fit or capable of being preserved alive."

The 33 Geo. 2. c. 27 (*l*) enacts, "That no person shall take, or knowingly have in his possession, either in the water or on shore, or sell, or expose to sale, any spawn, fry, or brood of fish, or any unsizeable fish, or any smelt, not five

(*g*) Altered as to the penalty by 1 Geo. 1. c. 18. post, Appendix, 501.

(*h*) Post, Appendix, 426.

(*i*) Post, Appendix, 497.

(*k*) Post, Appendix, 543.

(*l*) Post, Appendix, 574.

2ndly, Pro-  
hibitions  
against the  
taking spawn,  
fry, and  
young fish.

inches long ; and any person may seize the same, together with the baskets and package, and charge a constable, or other peace officer, with the offender, and with the goods, who shall carry them before a justice ; and on conviction before such justice, the same shall be forfeited and delivered to the prosecutor, and the offender shall besides forfeit 20s., recoverable as therein mentioned." And the same act provides, that brett or turbot, brill, or pearl, though under the specified dimensions, may be exposed to sale, so as the same be not sold by retail for above 6d. per pound.

3rdly, The  
time of year.

3dly. The Statute of Westminster the Second (*m*) prohibits the taking of salmon between Lady-day and St. Martin's Day, and directs that conservators shall be appointed for rivers, and that, for the first trespass, the offenders shall be punished by the burning of their nets and engines ; for the second, they shall be imprisoned the quarter of a year ; for the third, a whole year. And the 13 R. 2. c. 19. (*n*) enacts, " That salmon shall not be taken in the Loan Weir, Mersey, Ribble, and all other waters in the county of Lancaster, from Michaelmas-day to Lady-day, because salmon be not seasonable in those waters during that time."

The 17 R. 2. C. 9. (*o*) enacts, " That the justices of the peace shall be conservators for

(*m*) 13 Ed. 1. st. 3. post, Appendix, 258. See the comments on this statute, 2

Inst. 478.

(*n*) Post, Appendix, 370.

(*o*) Post, Appendix, 370.

carrying into effect the before-mentioned provision, and may appoint under conservators; and appoints the mayor and warden of London to be the conservators of the Thames and Medway, and points out the course they are to pursue.

3rdly, The time of year.

The 9 Geo. 2. c. 33. s. 4. (*p*) prohibits the taking of lobsters on the sea-coast of Scotland, between the 1st day of June and the 1st of September, under the penalty of 5*l.*, to be recovered by any informer before two magistrates.

4thly. The 1 Eliz. c. 17. s. 3. (*q*) requires that the nets, or engines, used for fishing in any streams, or rivers, except for the taking of smelts, eels, &c. shall have the mesh, or mask, of two inches and a half broad, angling excepted, and subjects the offender to a penalty of 20*s.* and the forfeiture of the fish and nets, or engines. It was held, in the case of *Bulbrook v. Goodhere*(*r*), that the water-bailiff of the river Thames has no right to take the nets of a person fishing in his own fishery, for the act does not give a power to seize otherwise than by the methods prescribed by the act.

4thly, Mode of taking, and size of nets.

The 3 J. 1. c. 12. (*s*) enacts, "That every person who shall in any haven, harbour, creek, or within five miles of the mouth of any haven, harbour, or creek of the sea, fish with any draw-net, or drag-net, under 13 inches meash, viz.

(*p*) Post, Appendix, 526.

Appendix, 1140.

(*q*) Post, Appendix, 404.

(*s*) Post, Appendix, 426.

(*r*) 3 Burr. 1708. post,



4thly, Mode  
of taking,  
and size of  
nets.

one inch and a half from knot to knot, or with any net with canvas, or other engine or device, whereby the spawn, fry, or brood of sea-fish may be destroyed, he shall forfeit such net and 10s., half to the poor, and half to the informer, recoverable as therein mentioned."

The 1 Geo. 1. st. 2. c. 18. s. 4. (t) enacts, "That if any person shall use, at sea, upon the coast of England, any trawl-net, drag-net, or set-net whatsoever, for the catching of any kind of fish, except herrings, pilchards, sprats, or lavidnian, which hath any mesh, or moke, of less size than three inches and a half at least, from knot to knot, or which hath any false or double bottom, cod, or pouch, or shall put any net, though of legal size, or mesh, upon or behind the others, in order to catch and destroy the small fish, which would have passed through any single net of three inches and a half mesh, the person so offending shall forfeit the nets and 20*l.*, and the justice of peace is directed publicly to burn such illegal nets."

5thly, Regu-  
lations as to  
importation,  
and buying  
and selling of  
fish.

5thly. In order to exclude *foreigners* from deriving any advantage from the sale of fish to British subjects, and to confine the importation of the latter, we find very early legislative provisions. The 33 H. 8. c. 2. (u) enacts, "That whoever shall buy any fresh fish, except sturgeons, porpoise, and seal, of any stranger in the parts of Flanders, Zealand, Picardy, or France,

(t) Post, Appendix, 495.

(u) Post, Appendix, 389.

or upon the sea between shore and shore, or in any place beyond the sea, to put to sale to any person within this realm, shall forfeit for every time 10*l.*; but that this should not extend to any persons who should buy fish in any part of Iceland, Scotland, Orkney, Shetland, Ireland, or Newland.

5thly, Regulations as to importation, and buying and selling of fish.

It appears, from the recitals in the 10 and 11 W. 3. c. 24. (x), that before that statute, by a combination of the fishmongers, fishermen were obliged to sell their fish to them, in the first instance, at their own rates, by which means a very injurious monopoly was established. But this statute enacts that *Billingsgate* shall be a *free market* for all sorts of fish, and that it shall be lawful for any person to buy or sell any sort of fish there. It then specifies the tolls which shall be paid by fishermen for selling fish in the market, and enables persons who buy fish there to sell the same again by retail. And, to prevent the engrossing, prohibits fishmongers from buying more fish than what is for his own sale, and not for or on behalf of any other fishmonger to expose to sale, under a penalty of 20*l.*, half to the poor, and half to the informer. It then directs the size of lobsters to be sold, and what fish may be imported by foreigners, or in foreign ships.

(x) Post, Appendix, 465. The origin of this stat. may be collected from the King v. —, 1 Showēr. 292. post, Appendix, 974. where, in an indictment for forestal-

ling, against a fisherwoman, Lord Holt declared that *Billingsgate* was an immemorial market. See also Rex v. Davies, 1 Rol. Rep. 11. post, Appendix, 885.

5thly, Regulations as to importation, and buying and selling of fish.

The 9 Ann. c. 26. s. 3. (y), to prevent regrating, enacts, "That no fish shall be sold more than once in *Billingsgate market*, and prohibits the selling of fish in that market before three o'clock in the morning, from Lady-day to Michaelmas, and five from Michaelmas to Lady-day; and the Lord Mayor has power to impose a fine not exceeding 10*l.* nor less than 5*s.* upon any offender against this statute."

Further provisions against the importation of fish bought of *foreigners* were introduced by the 1 Geo. 1. st. 2. c. 18. (z), which enacts, "That no fresh fish, nor any salt fish therein mentioned, shall be imported, sold, or exposed to sale, which shall be taken by, bought of, or received from any foreigner, or out of any stranger's ship, except protestant strangers, inhabiting within this kingdom; nor shall any person give any goods or other things in exchange for any sort of fish so taken as aforesaid; and the master of any ship in which any such fish shall be imported, forfeits 20*l.*" And the 9 Geo. 2. c. 33. (a) increases the penalty on the master to 50*l.*, and imposes 100*l.* on other offenders, recoverable by action within a year, half to the informer, and half to the poor of the parish.

The prohibition against *foreigners* importing lobsters and turbot, was removed by the 10th section of this act, which makes it lawful for any person, whether foreigner or native, to import

(y) Post, Appendix, 489.  
(z) Post, Appendix, 493.

(a) Post, Appendix, 524.

in any ship any lobsters or turbot, whether they be of foreign or British catching.

5thly, Regulations as to importation, and buying and selling of fish.

*Westminster* was established as a *free market* for fish by the 22 Geo. 2. c. 49 (b), which enacts, that it shall be lawful for any person to buy or sell fish therein without disturbance, appoints trustees, prescribes the tolls to be paid by fishermen, and regulates the appointment and duties of the various officers; it then authorizes any person to buy fish in the market to sell again, and imposes a penalty on monopolizing and forestalling. There are other regulations relating to this market, but being of a local nature and very voluminous, it will suffice to refer to them (c).

The 2 Geo. 3. c. 15. (d), contains a great variety of provisions, most of which relate to the *London* and *Westminster* markets, giving all persons, whether fishmongers or not, liberty to buy and to sell again fish without being liable to the penalties of regrating or otherwise, with a proviso, that such fish should not be sold again until conveyed to *London* or *Westminster*, under the penalty of 20*l.* with directions as to the mode of land carriage; the sorting of the fish at the markets; the sale of mackarel on Sunday; and with prohibitions as to contracts for the purchase of salmon or lobsters for a longer term than a year; and directions as to the species of fish, and number and quantity allowed to be sold in a lot; and

(b) Post, Appendix, 532. G. 2. c. 27.—2 G. 3. c. 15.  
(c) 22 G. 2. c. 39.—33 (d) Post, Appendix, 577.



5thly, Regulations as to importation, and buying and selling of fish.

protection to fishermen from being impressed. The 13 Geo. 3. c. 72. permits the importation of codfish, ling and hake caught and cured in Chaleur Bay, or any other part of the Gulph of St. Lawrence, or on the coast of Labrador.

The 36 Geo. 3. c. 118. (e), repeals the provision of the 2 Geo. 3. c. 15. which restrains the sale of fish at *Billingsgate* by retail, and authorizes such re-sale in that market once, but not oftener; and gives the Court of Common Council the same jurisdiction over this retail market, as over the other public markets of the city.

The 41 Geo. 3. c. 99. and 45 Geo. 3. c. 64. give *bounties* for taking and bringing fish to the cities of London and Westminster, and other places in the united kingdom; and the 42 Geo. 3. c. 19. amends the prior provisions relative to the sale of eels, and c. 88. repeals the prior provisions, so far as they limit the number of fish to be sold by wholesale within the 'city of London, and contains [other regulations as to the sale of fish by wholesale.

6thly, Persons authorized to interfere.

6thly, The 17 R. 2. c. 9. (f), appoints the justices of the peace to be the conservators for carrying into execution the statutes relative to the taking salmon at improper times of the year, or the fry of fish, and the suppression of nuisances by weirs; and authorizes them to appoint under-conservators, and gives power to the justices to convict offenders, and pay a moiety of

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(e) Post, Appendix, 658.

(f) Post, Appendix, 372.

the fines to the sub-conservator who gives information.

6thly, Persons authorized to interfere.

The 1 Eliz. c. 17. (g) contains provisions for the preservation of the spawn and fry of fish, and prescribes the dimensions of the nets; and gives power to the lord admiral, and all conservators of rivers by the oaths of a jury, to hear and determine the offences against the act; and also authorizes lords of leets and justices of peace, and of oyer and terminer, and judges of assize, to inquire of the offences.

The 3 J. 1. c. 12. (h) which subjects persons to penalties for erecting weirs, taking or injuring the spawn, fry, or brood of sea fish, or using an improper net, give the magistrates of corporate towns and justices of the peace, the power of levying the penalties. Most of the subsequent statutes vest the power for the recovery of the penalties, and the destruction of nets in one or more justices of the peace, or in the lord mayor of London, as to offences committed in the Thames and Medway.

## II. REGULATIONS OF A LOCAL OR PARTICULAR NATURE.

2ndly, Regulations of a local or particular nature, particularly with respect to oyster fisheries, the Thames, and Severn, and other rivers.

1. The *oyster fisheries* are particularly privi-

1. Oyster fisheries.

(g) Post, Appendix, 403.

(h) Post, Appendix, 427.

1. Oyster fisheries. <sup>leged and protected.</sup> The 31 Geo. 3. c. 51. (*i*)

enacted, that if any person shall with any net or other engine take or catch any oyster or oyster brood, or shall use the same for that purpose, or shall drag upon the ground of any such fishery with any net or other engine, every such person, other than the owner, lessee, or occupier of such fishery, or person lawfully entitled to catch oysters therein, shall be guilty of a *misdemeanour*, and shall be indicted and proceeded against as therein mentioned. It having been decided in the case of *Rex v. Walford* (*k*), that this statute having made the offence a *misdemeanour* only, had negatived the idea of a felony, and consequently that the taking of oysters off oys er lays in an arm of the sea, though not produced there, could not be felony; it was enacted by the 48 Geo. 3. c. 144. (*l*), that every person who shall knowingly and wilfully steal, take, and carry away any oysters or oyster brood from any oyster bed, or oyster laying, being the property of any person, and sufficiently marked out as such, shall be deemed guilty of felony, and be transported for seven years, or imprisoned, as the court shall think fit. And the statute contains clauses protecting persons who have a bona fide claim, and as to the course of proceeding, with a direction that the first mentioned statute shall not be deemed to be repealed, except as to the stealing oysters as aforesaid.

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(*i*) Post, Appendix, 695. Appendix, 1324.

(*k*) 5 Esp. Rep. 62.—Post, (*l*) Post, Appendix, 693.

2ndly, With respect to the *River Thames*, Lord Coke (*m*), says, "That it being so superior a river to others, is not included in any general words in an act of parliament, which follow the enumeration of particular rivers, and that therefore a particular act was passed to extend to that river the regulations relative to the taking of salmon at particular times of the year, and the taking of the fry of fish. The 17 R. 2. c. 9. (*n*), after reciting, that it had been granted to the citizens of London, that they might remove and take away all the weirs in the waters of the Thames and Medway, and that they shall have the punishment thereof pertaining to the king, enacts that the mayor or warden of London for the time being shall have the conservation of the statutes therein mentioned, and which prohibit the taking of salmon at particular times of the year, and the taking the fry of fish at all times, and that they shall make thereof due execution in the said waters of the Thames from the bridge of Staines to London, and from thence over the same water, and in the said water of Medway, so far as it is granted to the said citizens as is aforesaid (*o*). The conservancy of the river above Staines Bridge appears to be in the crown (*p*).

The 9 Ann. c. 26. (*q*), authorizes the court

(*m*) 2 Inst. 478.

(*n*) Post, Appendix, 372.

(*o*) As to the interest of the city of London in the soil of the river, see Appendix, 861. and 1300. 950,

951.

(*p*) Bulbrook v. Goudere, 3 Burr. 1768, Post, Appendix, 1141.

(*q*) Post, Appendix, 485.

2ndly, The Thames and Medway.



2ndly, The  
Thames and  
Medway.

of assistants of the company of fishermen of the river Thames to make such bye laws for the regulation of the company as they shall think fit, with powers to summon all persons, who fish within the limits of the fishery as common fishermen, to register their names, and number their boats, and contains regulations as to the taking the spawn of fish, or fish out of season, and authorizes the lord mayor to fix stakes in the river between London and Staines Bridge, to preserve the fry, spawn, and brood of fish, and directs the court of assistants to appoint a water-bailiff with a salary, and gives jurisdiction to the lord mayor, and justices of the peace in their respective counties, to hear and punish offences, with a saving of the rights of the lord mayor as conservator of the river, and the owners and occupiers of fisheries, &c. within the limits mentioned in the act. And further regulations are introduced by the 30 Geo. 2. c. 21. (r), which requires the lord mayor and aldermen to make reasonable rules and orders for the regulation of persons who shall fish as common fishermen in the Thames or Medway, the mode of fishing, with what nets, and at what times of the year, and the size of fish, and for the preservation of the spawn, or fry of fish, with several other regulations.

3rdly, Severn  
and other ri-  
vers.

3dly. The 1 Geo. 1. st. 2. c. 18. s. 14. (s), reciting that the general provisions for the pre-

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(r) Post, Appendix, 553.

(s) Post, Appendix, 500.

servation of fish had proved ineffectual in re-  
 spect to the rivers Severn, Mersey, Trent, Dee,  
 Wye, Team, Were, Tees, Ribble, Dunn, Air,  
 Ouze, Swaile, Calder, Wharf, Ure and Derwent,  
 for want of a due encouragement to informers,  
 and on account of the delay and expense of  
 suits, enacts, that if any person shall be guilty  
 of using nets, injuring the spawn or fry of sal-  
 mon, taking unsizeable salmon, or erecting of  
 banks, or putting nets across the rivers, &c. he  
 shall forfeit 5*l.* besides the fish taken, and the  
 nets used, half to the informer, and half to the  
 poor of the parish, recoverable before a justice  
 of the peace, who may cause the banks, &c. to  
 be demolished. And persons buying, selling, or  
 sending from these rivers any salmon less than  
 6*lb.* weight, forfeits 5*l.* recoverable by the same  
 means, with a proviso enabling the owners of an-  
 cient weirs or locks to repair and rebuild them.

3dly. Severn  
 and other ri-  
 vers.

For the preservation of fish in the river *Severn*,  
 in the counties of Worcester, Salop, and Glou-  
 cester, the 30 C. 2. c. 9. (*l*), enacts, " That if  
 any person shall, with any net or engine, take or  
 kill any salmon trout, pike, or barbel, under the  
 length appointed by the Statute 1 Eliz. (*u*), or  
 shall fish with any net for the taking of salmon,  
 salmon mart, salmon peel, pike, carp, trout,  
 barbel, chub, or gray ling, the mesh whereof shall  
 be under two and a half inches square from knot

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(*l*) Post, Appendix, 451. fishing in this river, post,  
 There appear to be private Appendix, 950, 1.  
 as well as public rights of (*u*) Ante, 250.

3dly, Severn  
and other ri-  
vers.

to knot, allowing to each mesh four knots, and exceeding the breadth therein mentioned, or shall fasten two nets together, or shall take the fry of eels, shall forfeit 5*l.* and the fish and nets. And any person who takes or destroys any spawn, forfeits 40*s.* and the nets or engines used. The statute appoints conservators of the river, and directs the mode of proceeding for the penalties. Further regulations for the better preservation of fish and the fisheries in the Severn and Vernieu are provided by 18 Geo. 3. c. 33.

The preservation of salmon and other fish in the rivers within the counties of *Southampton* and *Wilts*, is particularly secured by the Statute 4 Ann. c. 21. (x) which extends to those rivers the protection of two prior statutes, and prohibits the taking of salmon at certain seasons of the year, and under particular dimensions, and contains several other wholesome regulations. The restrictions upon the taking fish in these rivers by the owners and proprietors of fisheries therein, was removed by the 1st Geo. 1. st. 2. c. 18. s. 11 and 12. (y), and other regulations are imposed upon such owners. These acts are amended by 37 Geo. 3. c. 95.

The 43 G. 3. c. 61. contains regulations for the preservation of salmon and other fish in the rivers Seyne, Dort and Plym, in the county of Devon.

The 44 G. 3. c. 45. regulates and improves

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(x) Post, Appendix, 470.

(y) Post, Appendix, 499.

the fisheries in the arm of the sea between the county of *Cumberland* and the counties of *Dumfries* and *Wigton*, and the Stewartry of *Kircudbright*. <sup>3dly, Severn and other rivers.</sup>

The provision of the Stat. 1 Geo. 1. c. 18. s. 14. (z) is altered with respect to the river *Ribble* by the 23 Geo 2. c. 26. s. 1. (a) which recites, that it would be much more advantageous to the salmon fisheries in that river, if persons were restrained from taking, killing, destroying, or wilfully hurting, any salmon, in that river, between 14th of September and the 2d of January, and were at liberty to take and kill the same the remainder of the year, contains an enactment accordingly, and subjects persons who take salmon out of that time to the penalties of the recited act.

The 11 Geo. 3. c. 27. and 15 Geo. 3. c. 46. and 37 Geo. 3. c. 48. and 47 Geo. 3. c. 29. regulate the fisheries in the river *Tweed*, and the streams running into the same.

The 45 G. 3. c. 33. contains regulations for the preservation of salmon and other fish in the county of *Caermarthen*, and the county of the borough of *Caermarthen*. And the 46 Geo. 3. c. 19. regulates the oyster, sole, and salmon fisheries in the harbour of *Milford*, in the county of *Pembroke*, and the rivers running into the said harbour.

Such are the various regulations, both of a

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(z) Ante, 262, 3.

(a) Post, Appendix, 545.



3dly, Severn  
and other ri-  
vers,

general and particular nature, that affect *public* fisheries. In the next chapter we will consider the rights to *private* fisheries, and how far they are protected by the common and statute law.

## CHAPTER II.

OF PRIVATE RIGHTS IN FISHERIES IN THE  
SEA, NAVIGABLE RIVERS, AND OTHER WA-  
TERS, AND OF ACTIONS FOR INJURIES  
THERE TO, AND THE PLEADINGS THEREIN.

HAVING, in the preceding chapter, considered those rights to fisheries which are of a *public* nature, and to the enjoyment of which all British subjects are entitled; we will, in the present chapter, consider those *private* rights, to which one or more particular subjects may be entitled, in exclusion of others. This subject may be arranged under two heads—1st, As to the *place* in which the private right of fishery may exist; and, 2dly, The *nature of the interest*, or right of fishery, in such places (*a*).

1st, OF THE PLACES IN WHICH A PRIVATE  
RIGHT OF FISHERY MAY EXIST.

1st, Sea and  
navigable ri-  
vers where  
tide flows.

A private right of fishery may exist in the

(*a*) I am induced thus to arrange the subject, because in whatever *place* the right of private fishery may exist, it may, in point of *interest*, be either several, free, or common. In the cases of the Mayor and Commonalty of Orford v. Richardson, 4 Term

Rep. 437. post, Appendix, 1233. and in Weld v. Hornby, 7 East. 195. post, Appendix, 1325. and in Rogers v. Allen, 1 Camp. 309. post, Appendix, 1349. a several, free, and common of fishery were claimed in the sea.

1st, Sea and navigable rivers where tide flows,

sea, and in the creeks and arms of it, in navigable rivers, or in rivers not navigable, lakes and other waters.

We have seen that in general all British subjects have a right to fish in the *sea and navigable rivers*, and that *prima facie* one or more individuals have no exclusive right in such waters, but that a private right may exist in a particular subject, in exclusion of the public (*b*). Upon this point Lord Hale (*c*) observes that “The right of fishing in the sea, and the creeks and arms thereof, is originally lodged in the crown, in like manner as the right of fishing in a private or inland river is originally lodged in the owner thereof. But although the king is the owner, and as a consequent of his propriety, hath the primary right of fishing in the sea or creeks and arms thereof, yet all the King’s subjects in England have regularly a liberty of fishing in the sea, and the creeks and arms thereof, as a public common of piscary, and may not, without injury to their right, be restrained of it, unless in such places, creeks, or navigable rivers, where the king, or some particular subject, hath gained a propriety, exclusive of that common liberty, either by the King’s charter or grant, or by custom and usage or prescription.” Again, in the case of the Royal Piscary of Banne (*d*), the Court said, “That al-

(*b*) Ante, 244.

(*c*) *De jure Maris*, p. 1. c. 4. Hargrave’s Tracts, vol. 1. p. 11. *vid. et* the case of the the Royal Piscary of Banne,

Davy’s Rep. 55. post, Appendix, 856.

(*d*) Davy’s Rep. 55. post, Appendix, 856.

though the rule of the civil law is, that rivers and ports are public property, and therefore every one has a right of fishing therein ;” and Bracton lays down the same rule ; yet by the common law of England, a man may have a proper and several interest, as well in these places as in a piscary, and a distinction was taken between rivers navigable and not navigable. Every navigable river, so high that the sea flows and reflows in it, is a royal river, and the fishery in it is a royal fishery, and belongs to the King by his prerogative ; and the ground on which the King possesses an interest in navigable rivers, where there is a flux and reflux of tide, is, that such river partakes of the nature of the sea, and is called a branch of the sea, so far as it flows. So in Lord Fitzwalter’s case (*e*), Lord Hale said, “ In case of a private river, the Lord’s having the soil is good evidence to prove that he hath the right of fishing ; and it puts the proof upon them that claim *liberam piscariam*. But in case of a river that flows and reflows, and is an arm of the sea, there *prima facie* it is common to all ; and if any will appropriate a privilege to himself, the proof lieth on his side ; for in case of an action of trespass, brought for fishing there, it is *prima facie* a good justification to say, that the locus in quo is *brachium maris*, in quo unus quisque subjectus domini regis habet et habere debet *liberam piscariam*.

1st, Sea and navigable rivers where tide flows.

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(*e*) 1 Mod. 106. 3 Keb. 950, 1.  
242. S. C. post, Appendix,



1st, Sea and navigable rivers where tide flows.

Several more modern decisions also appear to establish, that an exclusive right of fishery, in an arm of the sea, may belong to a subject. Thus, in *Carter v. Murcot* (*f*), it was decided, that a plea which prescribed for a several fishery, in an arm of the sea, was good; and Lord Mansfield said, “In navigable rivers the proprietors of the land on each side have not the fishery, but it is common. It is *prima facie* in the King, and is public. If any one claims it exclusively, he must shew a right. If he can shew a right by prescription, he may then exercise an exclusive right, though the presumption is against him, unless he can prove such a prescriptive right. Here it is claimed and found; it is therefore consistent with all the cases, that he may have an exclusive privilege of fishing, although it be an arm of the sea. And Yates, J. said, “That the case of the river Banne was well decided; and it appears by it, that the crown may grant a several fishery in a navigable river, where the sea flows and reflows, or in an arm of the sea.” Again, in the *Mayor of Orford v. Richardson* (*g*), in which it was held that the issue was properly taken by the defendant, on the plaintiff’s prescriptive right of fishery, it was considered by the Court, that, in point of law, the prescriptive right might exist. And in *Bagot v. Orr* (*h*), the

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(*f*) 4 Burr. 2162. post, 2 Hen. Bla. 182. post, Appendix, 1146.      2 Hen. Bla. 182. post, Appendix, 1233 to 1243.

(*g*) 4 Term Rep. 437. reversed in 5 Term Rep. 367.      (*h*) 2 Bos. & Pul. 472. post, Appendix, 1293.

Court seem to be of opinion, that though *prima facie* every subject has a right to take fish found on the sea shore between high and low water mark, yet that such general right might be restrained by an exclusive right in an individual. Again, in the case of *Rogers v. Allen* (*i*), it was held that a prescriptive right to a several fishery in a navigable river, may pass as appurtenant to a manor, and that such right of fishery is divisible, and may be lost as to part, and preserved as to the residue, and that therefore an exclusive right to dredge for oysters in a navigable river, may subsist as appurtenant to a manor, although it be lawful for all the king's subjects to catch floating fish therein. And in the case of *Vivian v. Blake* (*k*), which is the most recent decision upon this point, it appears to have been taken for granted, that an exclusive free fishery may exist in a public navigable harbour or creek, in which the tide flows and reflows.

1st, Sea and navigable rivers where tide flows.

The legality of these exclusive rights in their inception, is disputed in a modern publication, in which the nature of aquatic rights is very ably discussed (*l*); and it appears that the King's granting of such exclusive rights, was an usurpation of prerogative. So in the case of *Warren v. Matthews* (*m*), where the party claimed a

(*i*) 1 Camp. 309. post, Appendix, 1349. *Carter v. Murcot*, 4 Burr. 2162. post, Appendix, 1146.

(*k*) 11 East. 263. post, Appendix, 1361.

(*l*) Schultes on Aq. Rights, 15 to 17. and 100, 1.

(*m*) 6 Mod. 73. 1 Salk. 357. post, Appendix, 1004.

—Bac. Ab. Prerogative, B. 3.

1st, Sea and navigable rivers where tide flows.

several fishery in the river Ex by a grant from the crown, Lord Holt said, “ Every subject of common right may fish in a navigable river, as well as in the sea, and the King’s grant cannot bar them thereof; for the crown only has a right to royal fish, and that the King only may grant, that a quo warranto ought to be brought to try the title of this grantee, and the validity of his grant.

Hence it seems that a private right of fishery in the sea or a navigable river, cannot be expressly claimed under an existing *grant* from the crown, as a grant to support it must be as old as the reign of Hen. 2d, and therefore beyond time of legal memory. For by Magna Charta, and the 2 and 3 Charters of Hen. 3. the King is expressly precluded from making fresh grants (*n*).

It is however explained that *custom or usage* may in some places vary the law, in regard to the existence of an exclusive appropriation of a public fishery, because persons within a particular district might consent to relinquish a general right for some particular advantage of a different, though perhaps of an equal or more extensively beneficial nature. And therefore a several fishery might originally be established in a navigable stream or arm of the sea by custom and usage, which having subsisted from time immemorial, obtains the force of law (*o*).

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(*n*) 2 Bla. Com. 39. and 114. Lib. Intr. 139. Schultes, Post, Appendix, 1349. n. b. 101.

(*o*) Co. Litt. 113. a. b. &

Admitting that the right exists, still it is subservient to the right of the public, as far as regards the purposes of navigation. And therefore where the plaintiff brought an action against the owner of a ship for disturbing him in his fishery in the river Tweed, by mooring against a rock on the bank of the river, where she delivered her cargo, and thereby prevented the plaintiff from taking so many fish as he would otherwise have done, Mr. Baron Wood said, that “ the action was not sustainable, unless the defendant had abused his right, by acting wantonly and maliciously for the purpose of injuring the fishery. For the privilege of the plaintiff must be subservient to the right of the public, and it would be of very mischievous consequence, if the owner of a fishery could prescribe to the public, how and where they are to moor their vessels in a navigable river (p).”

1st, Sea and navigable rivers where tide flows.

In an *action* for a disturbance or other *immediate* injury to a fishery in the sea or navigable river, if the plaintiff claim the interest in the *soil*, he may *declare in trespass* for breaking and entering his close, called the river, &c. (q), or if he have a *several* (r) or a *free* fishery (s), he may declare in trespass for entering his several or free fishery in such a haven, river, &c. And in these

Pleadings with respect to fishing in sea or navigable rivers.

(p) Campb. 517. post, Appendix, 1356.

Allen, 1 Camp. 309. post, Appendix, 1347.

(q) Carter v. Murcot, 4 Burr. 2162. post, Appendix, 1146.—Bagott v. Orr, 2 Bos. & Pul. 472. post, Appendix, 1293.—Rogers v.

(r) Mayor of Orford v. Richardson, 4 Term Rep. 437. post, Appendix, 1233. & Id. 1294. 1347. 1361.

(s) Id. *ibid*.



Pleadings  
with respect  
to fishing in  
sea or naviga-  
ble rivers.

cases it is usual to state that the defendant fished for and took the *plaintiff's* (t) fish, mentioning some number, and sometimes a count is added simply for taking the fish of the *plaintiff* (u). But if the injury were *not immediate*, or the plaintiff only claim a *common* of fishery, the declaration should be in *case*, stating the plaintiff's right, and the disturbance of it (x).

Where the plaintiff in a declaration in trespass complains of an entry into his close, or his several or free fishery in the sea or a navigable river, the usual *plea* is, that the locus in quo is a branch of the sea, or a navigable river, in which all the king's subjects have the liberty of fishing (y), to which the plaintiff must reply, setting out more particularly his exclusive right, as appurtenant to a manor, or otherwise by prescription or custom; which replication should not conclude with a traverse (z) of the public right; and the usual rejoinder denies the right claimed in the replication. If the action be in *case*, the usual plea is the ge-

(t) *Sed quære*, see post, and post, Appendix, 967. 978. 1005.

(u) *Richardson v. Mayor of Orford*, 2 Hen. Bla. 182. post, Appendix, 1238.; but this seems improper, unless it be shewn that they were dead, or in the plaintiff's possession.

(x) *Weld v. Hornby*, 7 East, 195. post, Appendix, 1325.

(y) See the precedent, 2 Chitty on Pleading, 611.—*Carter v. Murcot*, 4 Burr.

2162. post, Appendix, 1146. —*Richardson v. Mayor of Orford*, 2 Hen. Bla. 182. post, Appendix, 1238. — *Bagott v. Orr*, 2 Bos. and Pul. 472. post, Appendix, 1293.

(z) *Carter v. Murcott*, 4 Burr, 2162. post, Appendix, 1146. 1 Camp. 309. post, Appendix, 1349.—*Richardson v. Mayor of Orford*, 5 Term Rep. 367. 2 Hen. Bla. 182. post, Appendix, 1237. & see post, Appendix, 1347. 1362.

neral issue, under which the exclusive right of the plaintiff may, in consequence of the form of action, be tried, although the precise right is not stated on the record (*a*). Pleadings with respect to fishing in sea or navigable rivers.

With respect to the *evidence* to be adduced, where the issue is joined upon the particular and exclusive right of a subject to a fishery in the sea, or a navigable river, we have seen that, in general, 20 years undisturbed exercise of a free warren, common of pasture, way, &c. will afford presumptive evidence of right in the party enjoying it (*b*). But as 20 years acquiescence does not take away a public right (*c*), it appears to be at least advisable to adduce evidence of an exclusive exercise of the right of fishing as far back as possible (*d*). Evidence.

The *costs* in an action relating to a fishery in the sea, are regulated by the same rules which measure the costs in other actions. In the case of *Vivian v. Blake* (*e*), which was an action of trespass for breaking and entering the plaintiff's free fishery in A., and also in B., and also in A. and B.; and the plea was not guilty; and secondly, that the said free fisheries were parcels Costs.

(*a*) *Weld v. Hornby*, 7 East. 195. post, Appendix, 1326.

(*b*) *Ante*, 22. *Bealy v. Shaw*, 6 East. 215.—*Weld v. Hornby*, 7 East. 199.—*Goodtitle v. Baldwin*, 11 East. 488.—*Yard v. Ford*, 1 Saund. 175. n. 2. post, Appendix, 769 and 879.

(*c*) *Weld v. Hornby*, 7 East. 195. post, Appendix, 1329.

(*d*) See the course of evidence in *Rogers v. Allen*, 1 Camp. 309. post, Appendix, 1347.

(*e*) 11 East. 263. post, Appendix, 1361.

Costs.

of a navigable harbour, &c. common to all the king's subjects; and the replication prescribed for a free fishery in the said place, in right of the plaintiff's manor, on which prescription issue was joined. It was held that on a verdict for the plaintiff on the general issue, and for the defendant on the prescription, the latter going to the whole declaration, the plaintiff was not entitled to costs.

2ndly, Rivers  
not naviga-  
ble, &c.

We find, in the case of the Royal Piscary of Banne (*f*), which is considered a leading decision upon the subject of fisheries, that there is a material distinction between *rivers* navigable and *not navigable*, with regard to the *presumed* right of ownership in the fishery. In every navigable river, as high as the sea flows and reflows, we have seen that it is a presumption of law that all the king's subjects have the right to fish, but, in rivers not navigable, the presumption is directly reversed, and *primâ facie* the owners of the adjacent soil are, of common right, entitled to it. So that the owners of the one side have, of common right, the propriety of the soil, and consequently the right of fishing *usque filum aquæ*, or to the middle of the water, and the owners of the other side have a similar right in that part of the water to which their land is adjacent; and if a man be owner of the land on both sides, in common presumption he is owner of the whole river, and hath the right of fishing

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(*f*) Davies's Rep. 55. post, Appendix, 859.

according to the extent of his land in length (*g*). <sup>2ndly, Rivers not navigable, &c.</sup>  
 In the King v. Wharton (*h*), Lord Holt said, “If a river run contiguously between the land of two persons, each of them is, of common right, owner of that part of the river which is next his land, and may let it to the other, or to a stranger.” This rule was admitted by Lord Mansfield (*i*), who said, “In rivers not navigable, the proprietors of the land have the right of fishery on their respective sides, and it generally extends *ad filum medium aquæ*.” Hence it appears that in rivers not navigable, as well as in public ways, the presumption is, that the owners of the land *ex utraque parte* are the owners of the soil over which the river flows, and of the fishery therein. But this presumption may be rebutted in both cases, by shewing acts of exclusive ownership over the whole river or way (*k*).

If a river run between two manors, or estates, and is the mete and boundary between them, so that one half of the river and fishery belongs to one lord, and the other half to the other, the usual course is, amongst other pleas, to claim a several fishery on one side, and a common of fishery on the other (*l*).

(*g*) Lord Hale de jur Maris, p. 1. c. 1. — Hargrave's Tracts, vol. 1. p. 5. Banne case. — Davies's Rep. 55. post, Appendix, 859. 862.

(*h*) 12 Mod. 510. post, Appendix, 990.

(*i*) Carter v. Murcot, 4 Burr. 2162. post, Appendix, 1147.

(*k*) Com. Dig. tit. Chemin.

(*l*) Post, Appendix, 743. 862. but see Id. 932. — Rast. Entries, 666. B.



2ndly, Rivers  
not naviga-  
ble, &c.

The *statutes* mentioned in the preceding chapter, which relate to the time of the year when particular descriptions of fish may be taken, and the mode of taking them, and the size of the fish, appear to extend to *fisheries in rivers* in which several persons may be interested. This seems to have been so considered by Lord Mansfield, in the case of *Bulbrook v. Goodhere* (*m*), where it was held that the water-bailiff of the Thames had no right to take the nets of a person in his own fishery, but that the party must be proceeded against as directed by the Statute of Elizabeth.

Rights to fish  
in ponds and  
other waters.

By the common law, any person may make a *fish-pond* without any grant or licence from the crown (*n*), and a fishery may exist in one or more individuals exclusively, in any *pond or other stagnant water*. The presumption of law is, that the owner of the soil is the owner of the waters, or fishery. In the case of the *Queen v. Steer and others* (*o*), the defendants were indicted for fishing with nets in the prosecutor's pond, and taking and carrying away so many carp, "of the goods and chattels of the prosecutor;" and upon a motion that the indictment might be quashed, the Court said, "That it might have been sustained had the taking and carrying away the fish been well laid;" and the Court said,

(*m*) 3 Burr. 1768. post, Inst. 199.  
Appendix, 1140.

(*n*) Anon. 6 Mod. 183. post, Appendix, 1004, 5.  
post, Appendix, 1005.—2

“ That if a man has a close pond, in which there are fish, he may call them *pisces suos* in an indictment, or he may not do it, at his pleasure, and either way is good ; because, being in a close pond, the property *ratione loci* in them cannot be lost, because they cannot swim away ; but, notwithstanding, he cannot call them *bona et catalla*, if they be not in trunks, and for that the indictment is bad, though not fit to be quashed on motion ; the offence of fishing in other men’s ponds, and taking away their fish, being too great to receive so much countenance.”

Rights to fish  
in ponds and  
other waters.

It has been held (*p*), however, that there is a material distinction between fish in a trunk, or some narrow place where they are put to be taken at will and pleasure, and fish put into a pond ; and that, in the latter case, though purchased for the purpose by a testator, they shall go to his heir, as in the case of fish in a river, &c. and not to the executor. And it seems the better opinion, that an indictment at common law might be supported, for stealing fish out of a pond, or other place, from which they cannot escape, and may be taken at the pleasure of the owner (*q*).

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(*p*) Owen’s Rep. 20. post, Appendix, 843.

All difficulties are removed upon the question of felony by the statutes, post.

(*q*) 2 East. Pl. Cr. 610.

THE NATURE OF THE INTEREST OR RIGHT  
OF FISHERY IN THESE PLACES.

WITH respect to the nature of the *interest* in a fishery in any of those places in which we have seen private fisheries may exist, it is either by virtue of the *ownership in the soil*, or *several*, or *free*, or *common*, and sometimes it is said to be *in gross* (*r*); but there is great difference of opinion with regard to their distinct definitions. Mr. Justice Blackstone (*s*) states that he that has a several fishery, must also be (or at least derive his right from) the owner of the soil; and he defines a free fishery to be an exclusive right of fishing in a public river, and a common of piscary to be a liberty of fishing in another man's water. But Lord Coke (*t*) says, "that a man may prescribe to have a several fishery in such a water, and the owner of the soil shall not fish there; though if he claim to have *communiam piscariæ*, or *liberam piscariam*, the owner of the soil shall fish there." And Mr. Hargrave, in his note upon this passage, observes, "that ownership of the soil is not necessarily included in a several fishery, and common of fishery and

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(*r*) Reg. Brev. 96. — Lib. Intrat. 160. — Roll's Abr. tit. Prerogative. — Dary's Rep. 57. b. post, Appendix, 863. see the earliest editions of this work, in which the words, "or at least derive his right from," are not inserted.

(*s*) 2 Bla. Com. 39. but (*t*) 1 Inst. 122. a.

free fishery are the same thing." And, in a recent publication upon this subject, the same opinion is expressed (*u*). From the earliest cases that can be found upon this subject, the distinctions between these various fisheries seem to have been much disputed (*w*). It has, however, long been the practice in pleading, to treat all these rights as distinguishable from each other; and when the nature of the precise right of the party may not be certain, it is usual to state the right of fishery in different counts, or pleas, in the technical language of pleading, either as a close covered with water, or as a several, a free, or a common of fishery.

1st. The exclusive liberty of fishing appertaining to a man who is *owner of the soil*, is distinguishable from other descriptions of fisheries, and may, as it is said, be called *prædial*, or *territorial* fishery, instead of several fishery, since this more clearly ascertains its character, as being originally a profit or advantage incidental to the soil, which the owner had always a power to appropriate exclusively to himself, as being on his own land, for *cujus est solum, ejus est usque ad cælum* (*x*). And it has even been insisted, that a person cannot strictly be entitled to a several fishery in his own soil, because it must be

1st, Owner of soil over which fishery exists.

(*u*) Schultes on Aquatic Rights, 66, 7.

(*w*) In *Kinnersly v. Orpe*, Dougl. 56. post, Appendix, 1170. it is said to be a point still unsettled whether a per-

son who has an exclusive right of fishery, but without the soil, can declare on a several fishery.

(*x*) Co. Litt. 4. a.—Schultes' Aq. Rights, 87.



1st, Owner of  
soil over  
which fishery  
exists.

merged and extinguished in consequence of the unity of ownership (*y*); and even admitting this to be questionable, yet it is observable that it is always the practice in *pleading*, where a person claims a fishery in his own soil, at least in one count, or plea, to state his right to be "in his close covered with water." (*z*) And in Keilway's Reports, 19 Hen. 7. (*a*), the Court were of opinion that this form of declaring is proper where a person is owner of the soil, and that the plaintiff should not, in that case, state it to be his several fishery. And in an action of this nature, the plaintiff may complain not only of a trespass to the fishery and taking fish, but for breaking down the bank, per quod the water issued, and other fish went away, though it was insisted that the latter part was in case (*b*). It seems to have been admitted in the earliest cases, that a count of this nature, liberum tenementum, is a good plea, though it was disputed whether it was sufficient to a trespass in a several fishery (*c*).

Plea thereto,

If the defendant set up a right of fishing, he must shew particularly in his *plea* whether it be a several, free, or common of piscary, and whether he has it as appertaining to a manor, messuage, &c. or not (*d*).

(*y*) Schultes, 85 to 88. but see Rast. Ent. 666. b.

(*z*) Post, Append. 1140. 1160. 1293. 704. 823. 983, 4.

(*a*) Post, Appendix, 803. 323.—Rast. Ent. 666. B.

(*b*) Courtenay v. Collet, 1 Strange. 635. post, Appendix, 1047. and Id. 983, 4.

(*c*) Post, Appendix, 746.

(*d*) Hardress, 407. post, Appendix, 932.

The strict definition of a *several* fishery, is <sup>2ndly, A several fishery.</sup> "an exclusive right of fishing in the soil of another;" for though it is the doctrine of many, that the owner of a several fishery must also be owner of the soil, and consequently that it cannot exist over the freehold of another; and though, on the other hand, others who dispute this doctrine admit, that a party *may* claim a several fishery on his own soil, it should seem that, in strictness, when a *party is owner* of the soil, he cannot by that claim a fishery over it by the name of a *several* fishery, though he will, as owner, have the general right of fishing over it, the same as he may exercise every other right of ownership over his own land, and may complain of an entry on his close covered with water (*e*). It must be confessed, however, that the common understanding as to the nature of a several fishery is, that it exists where a person has an exclusive right of fishery either on his own soil or on the soil of another (*f*), and that he who has a several fishery is not necessarily the owner of the soil, but that, as the exclusive right of fishing is an incident to the ownership of the soil, it will be presumed until the contrary be shewn, that such right is in the owner of the soil, and that hence to an action of trespass for an injury to a right of several fishery, it is a good plea that the soil and freehold belong to the defend-

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(*e*) Ante, 28.

838. 2nd edit.

(*f*) 2 Selwyn. Ni. Pri.

2ndly, A several fishery.

ant (g). To which the plaintiff may reply his title to the several fishery, either by prescription or grant; thereby rebutting the presumption of the right of several fishery being still vested in the owner of the soil.

It was observed by Lord Mansfield, “ that, to constitute a *several* fishery, it is requisite that the party claiming it should so far have the right of fishing independent of all others as that no person should have a co-extensive right with him in the subject claimed; for that, where any person has such co-extensive right there it is only a free fishery; but that a partial independent right in another, or a limited liberty, does not derogate from the right of the general owner; and therefore, in the case of *Seymour v. Lord Courtenay* (h), where Lord Clifford, being the general owner of a fishery, demised it to the plaintiff, reserving a particular species of fishery, viz. the oystery, and the liberty of taking fish for his own table, it was held that the plaintiff’s interest in the fishery was several, and that he might declare and recover as for a trespass in his several fishery.

It appears to be still a disputed point whether a person can have several fishery without being also owner of the soil (i). The better opinion, however, seems to be, that though such right must have been *originally* derived from the owner

(g) 2 Selwyn. 838. 2nd edit.

(h) 5 Burr. 2814. post, Appendix, 1158.

(i) Id. ibid. 2 Bla. Com. 39.—Co. Litt. 122. a. and n. 7.—Doug. 56.—Schultes. 38. 85. &c.

of the soil, it may exist in a person who has no interest therein; and it is clearly established by the above-mentioned case, that at least by a demise, or grant, *immediately* from the owner of the soil, a several right of fishery may exist, and be declared on as such (*k*). Mr. Justice Blackstone (*l*) states, “that he who has a several fishery must also be (or at least derive his right from) the owner of the soil.” But admits that there are not wanting respectable authorities, which maintain that a several fishery may exist distinct from the property of the soil. Lord Coke (*m*) says, “that a man may prescribe to have separalem piscariam in such a water, and the owner of the soil shall not fish there; but if he claim to have communiam piscariæ, or liberam piscariam, the owner of the soil shall fish there.” Mr. Hargrave observes (*n*), “that, according to this passage, ownership of the soil is not necessarily included in a several fishery;” and he objects to the doctrine of Mr. Justice Blackstone, insisting that there is no inconsistency in granting the sole right of fishing, with a reservation of the soil, and its other profits, and that Bracton expressly takes notice of such a grant, for his words are, “that one may servitutem imponere fundo suo quod quis possit piscari cum eo, et ita in communi vel quod alius per se ex toto (*o*);”

(*k*) Seymour v. Lord Courtenay, 5 Burr. 2814. post, Appendix, 1158.

(*n*) Co. Litt. 126. b. n. 7. to page 122. a.

(*l*) 2 Bla. Com. 39.

(*o*) Bracton. fol. 208. b.

(*m*) 1 Inst. 122. a.

Co. Litt. 4. b.



2ndly, A several fishery.

and that there are also numerous other authorities for it, the old books of entries agreeing that one may prescribe for a several fishery against the owner of the soil, and that there is no reason why a several piscary should not exist without the soil as well as a several pasture, which it is clearly established may be claimed even in exclusion of the owner of the soil (*p*). He then observes, "that the chief reasons urged against Lord Coke's doctrine are these: 1st, that several writs never applicable, except to the soil, lie for a piscary; 2ndly, that *suum liberum tenementum* is a good plea to trespass for fishing in a several fishery; and thirdly, that the soil will pass, as it is said, by the grant of a piscary." But Mr. Hargrave insists that all these objections may be repelled: first, because the writs relied on, will not always lie for a several fishery; for that, if a *præcipe quod reddat* is brought of a piscary in the water of another person, the writ is bad, and a *quod permittat* is the proper remedy; besides, in the cases of actions for trespass in a several piscary, or at least in some of them, the writ seems in effect to state a several fishery in the plaintiff's own soil, which therefore proves nothing as to the sense of several piscary, without further explanation. Secondly, because the plea *liberum tenementum* may be replied to by prescribing for a several fishery. Thirdly, because notwithstanding the grant of a

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(*p*) Potter and North, 1 Saund. 350.

piscary generally may perhaps pass the soil, yet it will not if there be any words to denote a different intention, as, where one seised of a river grants a several fishery in it, and much less will the soil pass when there is an express reservation (q). And he concludes by remarking that the arguments against Lord Coke's doctrine are short of the purpose, or, at the utmost, they only prove that a several fishery is *presumed* to comprehend the soil till the contrary appears, which is perfectly consistent with Lord Coke's position, that they may be in different persons, and which, indeed, appears to us the true doctrine on the subject. Mr. Schultes, in his Treatise on Aquatic Rights (r), insists that the ownership of the soil is not essentially necessary to the constitution of a several fishery, but may be distinct. He seems also to suppose that, in strictness, a several fishery, like a right of common, is extinguished when the owners of it becomes also entitled to the soil over which it exists, and that he ought to claim his interest in the fishery, not as a several fishery, but as on land covered with water.

The following *miscellaneous cases and observations*, collected from the Reports, may tend in some measure to shew the nature of a several fishery. They are given in the order in which

Miscellaneous cases and observations relating to several fisheries.

(q) Co. Lit. 4. b. 127. a. n. 7. to page 122. a.—Potter v. North, 1 Saund. 350. In this case it was held that a prescription by a freeholder to have the sole pasture of land for the whole year, in exclusion of the lord or owner of the soil, is good.

(r) Page 38. 85. &c.

Miscellaneous cases and observations relating to several fisheries.

they arise. In the Year Book, 2 Hen. 4. (s), it was held that a several fishery might be extended under a statute. In Sir Wm. Calthrop's case (t), Brian, J. said, "No one can have a several fishery except in his own land, and this solely to himself." In which Littleton, J. agreed with him. But it is observed by Mr. Schultes (u), that this is open to objection, and he shews on the authority of Bracton and others that a several fishery might be granted to another exclusively of the soil, and may consequently exist independently of it. And it is observable that in the Year Book, 10 Hen. 7. (x), Brian, J. himself appears to have admitted, that it was possible for the soil to be in one, and the right of several fishery in another, though the common intentment is otherwise. In *Reynell v. Champernoon* (y), it was held that the owner of a several fishery might detain nets or other engines damage feasant, but if he cut or destroy them, trespass will lie. In the Case of *Child v. Greenhill* (z), it was held that the owner of a several fishery hath a privileged property in the fish therein, and trespass will lie for taking them; though it was objected that the declaration was insufficient in saying *pisces suos*, because he hath not any property in the fish until he takes

(s) P. 18. post, Appen- 788.  
dix, 723.

(t) Year Book, 17 Edw. Append. 924.

4. p. 6. post, Appen. 771.

(u) Aq. Rights, 38.

(x) P. 24, post, Appen. 931.

(y) Cro. Car. 228. post,

(z) 1 Roll. 664.—Cro. Car.

558. S. C. post, Appendix,

them, and has them in his possession, though it seems to have been considered, that a person entitled to a free fishery has not such an interest therein as with propriety to term them his fish.

Miscellaneous cases and observations relating to several fisheries.

So in *Pollexfen v. Crispen* (*a*), where the plaintiff brought trespass *quare piscos suos cepit in separali piscaria*, and it was objected in arrest of judgment that this was improper, the Court said, that if it had been so it was aided by the verdict, but that it would even have been good upon a demurrer, by reason of the local property, and so is the register.

In the case of *Seymour v. Lord Courtenay* (*b*), where the plaintiff declared in trespass for disturbing him in his several fishery, and he only proved a grant of the fishery from Lord Clifford, with the exception of an oystery, and also a reservation of a right to Lord Clifford, the grantor, of taking fish for the supply of his own table, it was held that the plaintiff was entitled to recover upon such declaration for an injury to his several fishery, though it was objected on behalf of the defendant, that a several fishery must be exclusive of the right of all other persons, whereas others had here a right to fish throughout the whole limits of the fishery; and another exception was taken, that none can have a several fishery except the owner of the soil. The Court declined giving any positive opinion, whether a person can have a several fishery without being

(*a*) 1 Ventris, 122. post, Append. 948.

(*b*) 5 Burr. 2814. post, Appen. 1158.



Miscellaneous cases and observations relating to several fisheries.

owner of the soil, though they appear to have in effect decided that such a right might exist independently of the soil. And the Court said, in order to constitute a general fishery, it is requisite that the party claiming it should so far have the right, independent of all others, as that no person should have a co-extensive right with him in the subject claimed. But a partial independent right in another, or a limited liberty, does not derogate from the right of the general owner. Here Lord Clifford being the general owner demised to the plaintiffs, reserving a particular species of fishing, viz. the oystery, which in its nature is to be exercised in a particular mode. A reservation is equal to a grant; therefore it brings it to the same question as if the plaintiffs, being the general owners, had granted the sole right of fishing for oysters to Lord Clifford. And taking this to be the case, we still think the plaintiff would have had a several fishery to all intents and purposes, except as to the taking of oysters; and as to the liberty reserved to Lord Clifford of taking fish for his own table, that is a mere limited liberty, and not co-extensive with the right of the plaintiffs, who can take fish at all times and for all purposes. If this is not a several fishery, it would not be any species of fishing that the law knows. It could not be a free fishery, because no person has a co-extensive right with the plaintiffs. And as to its being a common of fishery, that is not pretended. Therefore, on the whole, we think it

can be no other than a several fishery. So in *Rogers v. Allen* (*c*), it was held that a right of fishery is divisible, and may be abandoned as to part, while another part is preserved.

Miscellaneous cases and observations relating to several fisheries.

In Loft's Reports (*d*), it is said the presumption is, that he who has a separate fishery is owner of the soil, and that Lord Mansfield was of opinion that notwithstanding Lord Coke's observation, the *presumption* certainly was, that the man who has a several fishery is owner of the soil, and that Sir John Davy, observes upon Lord Coke's objection to the contrary, and denies it expressly. In *Kinnersley v Orpe* (*e*), the plaintiff had declared in trespass for fishing in his several fishery, but was not owner of the soil, and it is reported that his counsel were unwilling to risk their case upon the point, which seems yet unsettled, whether a person who has an exclusive right of fishery without the soil, can declare on a several fishery, and that as the defendants were desirous of trying the merits, it was agreed that the cause should be tried as if there had been a count on a free fishery. Lord Coke says (*f*), "That if a person be seised of a river, and by deed grant a several fishery in the same, and makes livery of seisin secundum formam cartæ, the soil does not pass; and if the river become dry, the grantor may take the be-

(*c*) 1 Camp. 209. post, Append. 1347.

(*d*) 364. post, Appendix, 1163.

(*e*) Dougl. 56. post, Appendix, 1170.

(*f*) Co. Lit. 4. b.

nefit of the soil, for a particular right only passed to the grantee.

For what injury to a several fishery an action will lie.

With respect to the nature of the *injury* to this right of *several* fishery, it appears to be settled, that an action of trespass may be supported merely for fishing in it, though the defendant may not have actually caught any fish, because the act of fishing is not only an infringement of the plaintiff's right, but would be evidence of an using and exercising of the right by the defendant, if such an act was overlooked (*g*).

Pleadings relating to a several fishery.

With respect to the *declaration* in trespass for an injury to a several fishery, if there be any doubt as to the precise nature of the right, it is usual in one count to declare for breaking and entering the plaintiff's close, and there fishing and taking the plaintiff's fish; in another count for entering the plaintiff's several fishery, and there fishing and taking plaintiff's fish; with a third for a trespass in a free fishery; and a fourth for taking and converting the plaintiff's dead fish (*h*). In the Year Book (*i*), it was held that in a declaration in trespass to a several fishery, it is not necessary to shew the particular title. It seems proper, on account of the local property, for the plaintiff to declare that the fish taken were *his* (*k*). Formerly a declaration in trespass for

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(*g*) Patrick v. Greenway, 1 Saund. 346. b. post, Append. 945; and see id. 791. Child v. Greenhill, Cro. Car. 553.—Sir Wm. Jones. 440. S. C. post, Append. 931.—  
 (*h*) 2 Chitty on Pleading, 438, 9. Pollexfen v. Crispin, 1 Ventr. 122. post, Appendix, 947. to 949.—Fontleroy v. Aylmer, Ld. Raym. 239.  
 (*i*) 46 Edw. 3. p. 28. post, Append. 720.  
 (*k*) Post, Appendix, 756.

breaking his close covered with water, or his several fishery, and taking his fish, without stating the number and description of them, was held to be demurrable and even bad after verdict (*l*). But this omission, it should seem, would now no longer be considered as objectionable, because the entry into the fishery is the principal ground and foundation of the action, and taking the fish only matter of aggravation (*m*). In *Hovel v. Reynolds* (*n*), it appears to have been considered objectionable to lay in the declaration the trespasses with a continuando, but there is no objection to the modern mode of declaring that the trespasses were committed on such a day, and on divers other days and times between that day and the commencement of this suit.

It appears to have been a disputed point whether a *plea of liberum tenementum*, in an action of trespass in a several fishery, is good, we have seen that it is an insufficient plea in an action of trespass for entering a free warren (*o*). In the first case on this subject (*p*) in an action of trespass to a several fishery, the defendant pleaded that the locus in quo was a stream running from Stoke Green to Stoke Marsh, and that as to parcel of the said water, shewing it by bounds of two greens, the soil was the defend-

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(*l*) *Playter's Case*, 5 *Coke*. k. 2 ed.  
 34. b. post, Appen. 823. — (*n*) 1 Vent. 329. post,  
 955. 957. 959, 960. 963 — Appen. 962.  
 11 East. 571. post, Appen. (*o*) Ante, 238.  
 1371. (*p*) Year Book, 28 Hen.  
 (*m*) 2 Saund. 74. n. 1.—2 6. p. 29. post, Appendix,  
*Chitty on Pleading*, 437. n. 743.



Pleas.

ant's freehold, and that he took the fish there, as it was lawful for him; and this plea was objected to, because the plaintiff had declared not for trespass in his close, but particularly for a trespass in his several fishery, and shewn how from the beginning; and that the plea that the soil was in the defendant, was no answer, because it might be true, and stand together with the declaration; the soil might be the defendant's, and yet the several fishery the plaintiff's. But it was answered that if the freehold be the defendant's, it shall not be *intended* that any one has a several fishery, except the defendant himself, unless the *contrary be shewn*, because, by common intendment, the soil carries with it the several fishery, and the soil and the several fishery may be in one person. It appears, that the objection to the plea was waived, and hence it may be considered as having been decided in that case, that *liberum tenementum* is a good plea. In the Year Book, 17 Edw. 4. (q) there was a similar plea, and it was objected to, because possibly the defendant might have granted the plaintiff a several fishery in his own water, and the soil and freehold would continue in the lessor, yet he could not fish there, as it would be in the case of a warren or chase. And the plea was held good by the whole Court. An objection to such a plea was again made in the Year Book, 10 Hen. 7. (r) and the same argument was urged as to the owner of the soil,

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(q) P. 6. Post, Appendix, 771.

(r) P. 24. post, Appendix, 786.

being *prima facie* owner of all the profits, and consequently of the fishery. The plea was demurred to, and the plaintiff joined in demurrer, and it does not appear what judgment was given. In Keilway's Reports, 19 Hen. 7. (*s*) in trespass wherefore he fished in the several fishery of the plaintiff, the defendant pleaded, that the place where, &c. was an acre of land covered with water, which was his freehold. And this plea was objected to, because a several fishery is a special liberty which a person may have in another's land, and it resembles a warren, which is distinct from land, and the proper action for the tenant of the soil is "Wherefore with force and arms he entered and broke into his pond;" and this was the better opinion of the Court. But the reporter subjoins a *quære*, for it was adjourned, and he states, that in the King's Bench in the 8th Hen. 8. the plea of *liberum tenementum*, in the case of a "several fishery," was held good by the whole Court, and the plaintiff was obliged to reply. In *Smith v. Kemp* (*t*), Lord Holt said, that he who has a several fishery is owner of the soil, and therefore it is a good plea, that it is *liberum tenementum* of another. A doubt having been suggested as to the propriety of the plea of *liberum tenementum* to trespass in a several fishery, a counsel, as eminent for his knowledge of law as of pleading, gave the following opinion: "I am surprised to find a doubt enter-

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(*s*) Post, Appendix, 803.      pendix, 975.

(*t*) 2 Salk. 637. post, Ap-

Pleas.

tained, whether the plea of *liberum tenementum* is a good plea to trespass for fishing in the plaintiff's several or free fishery. This plea stands upon undoubted principles of law, because the owner of the soil is *prima facie* owner of the fishery. The fishery originally belongs, and is primarily incident to the soil, and when it becomes a separate and distinct hereditament, it is by grant from the owner of the soil. Therefore *liberum tenementum* as to the soil, is *prima facie* a good title to the fishery within it, and the plaintiff, in his replication, must either deny the *liberum tenementum*, or shew a title to the several or free fishery, by actual grant in existence, or by prescription. The title indeed may be tried on the general issue, but it cannot be doubted, that it is greatly and obviously to the advantage of the defendant to plead *liberum tenementum*, to force the plaintiff to shew how he claims a several or free fishery."

As however we have seen that it is still an unsettled question, whether the owner of a several fishery must be also the owner of the soil, it may be considered questionable whether this plea is sufficient. It has been observed by Mr Serjeant Williams (*u*), when speaking of the plea *liberum tenementum* in general, "that so general a plea seems contrary to a principle in pleading that every plea should contain a direct and positive answer to the declaration, so as to bar the action

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(*u*) 1 Saund. 299. c. n. 6.

if true in fact; and that this plea does not seem to <sup>Pleas.</sup> be within this principle, because the plaintiff may, notwithstanding, have such an interest in the land as will support his action; and, in the case of *Lambert v. Strother* (*x*), Willes, Ch. J. thought, for this reason, that the plea was confined to those cases, where it is used as a common bar only, but where the declaration ascertains the place, he seemed to think that the general plea of freehold could not be supported.

The defendant may plead to a declaration for trespass in a several fishery, that he is seised in fee of a house and land, and prescribe for *common* of fishery in the locus in quo, as appendant thereto (*y*), or he may plead a *free* fishery as appurtenant to a manor (*z*). And if the plaintiff complains also of a trespass to his land, the defendant may, in addition to his claim of fishery, prescribe for a right to enter upon the land, to draw the nets, or beat the water for fish, both of which prescriptive rights may be put in issue in the same replication (*a*). When in trespass to a several fishery the defendant pleads, that he is entitled to a several fishery, the plea should conclude with a traverse of plaintiff's several fishery, as al-

(*x*) Willes Rep. 222. and see 1 Saund. 300. n.6.—Bro. Abr. Trespass. 168. 284. 9H.7. 6 pl.3.—Bro. Trespass, 422.—6 Mod. 119.

(*y*) Year Book, 4 Edw. 4. p. 29. Post, Appendix, 759.

(*z*) Year Book, 7 Hen. 7. p. 13. post, Appendix,

779.—3 Dyer. 267. post, Appendix, 819.—*Rogers v. Allen*, 1 Camp. 309. post, Appendix, 1349.

(*a*) 3 Dyer. 267. b. post, Appendix, 819.—Wane and Rider, 2 Mod. Rep. 67. post, Appendix, 960.



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leged in the declaration (*b*). The claim of a prescriptive right must correspond with the evidence, or at least must not be more extensive, and therefore where issue was joined, upon a prescription for the sole and exclusive right of fishing over four places in a navigable river, proof of the right of fishing over three of the four places, was holden not to support the right claimed, although it appeared, that the trespasses complained of were committed in one of the three places over which the right was shewn to exist (*c*).

In the Year Book, 18 Hen. 6. (*d*), it was said, “That to a declaration in trespass for entering a several fishery, it is a bad *plea* to say that the plaintiff had nothing in the close, &c. without shewing specially a title in the defendant, or in some person under whom he acts, for this amounts to a plea of Not Guilty.

To a plea claiming a right of fishing in the plaintiff's fishery, it is sometimes necessary in the replication to new assign, as well as to traverse, or otherwise answer the plea. As where an action is brought for fishing in the river T. being the plaintiff's fishery, and the trespass intended by the declaration is for fishing to the extent of two miles and upwards; if the defendant pleads that he is seised in fee of ten acres adjoining the river, and prescribes for a free fishery in the river along the side of the ten acres, the plaintiff ought

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(*b*) 2 Mod. 67. post, Ap. 1351.  
pendix, 961, 2.

(*c*) Rogers v. Allen, 1 (*d*) P. 21. post, Appen-  
Ca mp. 209. post, Appendix, dix, 736.

not merely to traverse the prescription, and go Pleas. to issue upon it, because at the trial he would not be permitted to give evidence of any act of fishing by the defendant, either above or below the ten acres, for the question would be confined to the prescription only; but the plaintiff should also new assign, and state that the trespass complained of was not only for fishing in the river adjoining the ten acres, but also above and below, and then the defendant will be under the necessity of giving some answer to the whole trespass. In this case, without a new assignment, the plaintiff would run a great risk of being tricked. For if the prescription were found for the defendant, he would succeed in the action, though guilty of almost the whole trespass for which the action was brought (e).

With respect to a *free fishery*, there is so much 3dly, Free fishery. contradiction in the books, as to render it difficult to give an accurate definition. Mr. Justice Blackstone (f) states it to be “an exclusive right of fishing in a *public* river, and that it differs from a several fishery, because it is not necessary that he who has a free fishery should be owner of the soil, and that it differs also from a common of piscary on account of the free fishery being an exclusive right, when the common of piscary is not so, and therefore in a free fishery a man has a property in the fish before they are caught, but in a common of piscary not till afterwards, though

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(e) 1 Saund. 300. n. 6.

(f) 2 Bla. Com. 39.

3dly, Free  
fishery.

some have considered a free fishery not as a royal franchise, but merely as a private grant of a liberty to fish in the several fishery of the grantor." But Mr. Hargrave(g) says, that both parts of this description of a free fishery are disputable, and that this kind of fishery extends to *all* streams whether *private* or *public*, neither the register or other books professing any discrimination. He also insists that a free fishery, and a common of fishery, are the same. And Mr. Schultes, in his Essay on Aquatic Rights(h), states, as his opinion, that, upon a general view, there are only in fact two sorts of fisheries—first, free or common of fishery, and secondly, several fishery, or fishery in gross, and that a free fishery, and common of fishery, are convertible terms, and synonymous with each other with regard to their privileges.

A current of decisions, however, appear to establish a distinction between a free fishery and a common of fishery, and that an action of trespass may be supported for entering it, which it is clear would not lie when the party has only a common of fishery(i). And in the case of Seymour v. Lord Courtenay(k), Lord Mansfield treated a free fishery as distinguishable from a several or common of piscary, and appears to have thought that a person had a free fishery,

(g) Co. Litt. 127. b. n. 7. 1238. 1325. 1347. 1361.  
to 122. a. 1362. See writ, Fitz. N. B.  
(h) P. 60. 62. 88.

(i) Post, Appendix, 707. (k) 5 Burr, 2814. post,  
718. 725. 961. 967. 975. Appendix, 1161.

when another had a *co-extensive* right with him. <sup>3dly, Free fishery.</sup>  
 The following cases, which are given in the order in which they arise, may tend to explain the nature of this description of fishery.

In the Year Book, 4 Edw. 3. (*l*) an action was brought for a trespass in a free fishery in breaking down a weir, and it was admitted that there was a distinction between a free and a common of fishery, and it was held, that though the plaintiff might have had his assize, he might nevertheless support trespass without mentioning in whose soil, and that the party entitled to a free fishery may make an enclosure to confine the fish. It appears also from the Year Book, 46 Edw. 3. & 3 Hen. 4. (*m*), that a free fishery may be demised. In Sir William Calthrop's case (*n*), Brian, J. said, "There is a great difference between a several and a free fishery. A free fishery I may grant to twenty in my pool; for if no one disturbs him, he has a free fishery. In which Littleton concurred with him. But Choke, J. said, "That he knew no difference between them, for he who has a free fishery, has it solely to himself. To which Brian, J. answered, "No, I will shew you the difference: if I have a great close, and you three have three closes adjoining mine, I may grant to each of you to have *liberum ingressum et egressum* over my land to yours; so thus a man may have free fishery in another soil, but

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(*l*) P. 48. post, Appendix, 725.

707. (*n*) 17 Edw. 4. p. 6. post,

(*m*) Post, Appendix, 719. Appendix, 772.



3dly, Free  
fishery.

not several. In *Child v. Greenhill* (*o*), it appears to have been considered, that trespass for entering a several fishery, and taking pisces suos ibidem, is sustainable, but that a person entitled to a free fishery, has not a sufficient interest in the fish before they are caught, as to term them, in pleading, his fish. In *Upton v. Dawkin* (*p*), a declaration in trespass for taking fish of the plaintiff, in a free fishery, was held insufficient even after verdict, on the ground that a party has not such a property in a free fishery, as to call the fish his own. But in *Smith v. Kemp* (*q*), Lord Holt, Ch. J. and Dolben, J. against the opinion of Eyre, J. held a contrary doctrine; and Lord Holt, after stating that there were three descriptions of fisheries, said that the grantee of a free fishery hath a property in the fish, and may bring a possessory action for them without making any title. In *Gibbs v. Woolliscott* (*r*), where trespass for fishing in a several and in a free fishery was brought, and taking and carrying away five hundred salmon, upon Not Guilty pleaded, the defendant was found guilty as to the fishing in the free fishery; and, as to the several fishery, the Jury found that the locus in quo was parcel of his manor; and Lord Holt said, “A man may have a free fishery in his own soil, as, for instance, he may have a river in his manor, and another may have a right of fishing there with him, but be-

(*o*) Cro. Car. 553. post, Appendix, 931.

(*p*) 3 Mod. 97. post, Appendix, 967.

(*q*) 2 Salk. 637. post, Appendix, 975.

(*r*) 3 Salk. 290. 360. post, Appendix, 978.

cause the plaintiff, in his declaration, had not alleged that the defendant took salmones suos nor ibidem cepit, the defendant had judgment. It appears from the case of *Richardson v. Mayor and commonalty of Orford* (*s*), that a free fishery may be prescribed for in a haven, arm of the sea, or navigable river.

From these cases it appears, that notwithstanding some dicta to the contrary, an action of trespass may be supported for entering the plaintiff's free fishery, and it may be laid that the defendant took the plaintiff's fish therein (*t*). In such an action it has been considered, that the defendant may plead liberum tenementum in the soil (*u*); or he may plead that he is entitled to a several, free, or common of fishery (*x*).

*Common of fishery* is defined to be a liberty of fishing in common with other persons in a stream or river, the soil whereof belongs to a third person (*y*); it does not differ in any respect from any other right of common, and trespass will not lie for an injury to it (*z*). We have seen that it has been insisted that a common of fishery is the same as a free fishery (*a*). But in the case of

(*s*) 2 Hen. Bla. 182. post, Appendix, 1237.—See also *Rogers v. Allen*, 1 Camp. 309. post, Appendix, 1347. —*Vivian v. Blake*, 11 East. 263. post, Appendix, 1361. (*t*) Ante, 299.—2 Bla. Com. 39, 40.—*Smith v. Kempe*, 2 Salk. 637.—*Carthew*. 285. S. C. post, Append. 975.—*Bac. Ab. Tit. Trespass*, F. in which the case of *Peck v.*

*Turner* appears to have been overruled, sed. vid. *Selwyn*. Ni. Pri. 842.

(*u*) Year Book, 4 Ed. 3. 48. post, Append. 707.

(*x*) Ante, 267. n. a.

(*y*) 2 Bla. Com. 34.

(*z*) *Smith v. Kempe*, 2 Salk. 637. post, Appendix, 975, 6.—See plea *Rast. Ent.* 666. b.

(*a*) Ante, 300.—*Co. Litt.*

3dly, Free fishery.

4thly, Common of fishery.

4thly, Common of fishery.

Smith v. Kempe (*b*), Holt, Ch. J. and Dolben, J. against the opinion of Eyre, J. disallowed the authority of 1 Inst. 122. a. and considered a common of fishery as distinguishable from a free fishery; and it seems to have been admitted by the Court in Seymour v. Lord Courtenay (*c*), that there was a difference between these two kinds of fishery. And it is the practice, where others have a right of fishing as well as the party, to state this right in one count or plea as a common of fishery (*d*). And Mr. Justice Blackstone (*e*) observes, "that a common of fishery differs from a free fishery, because the free fishery is an exclusive right, the common of piscary is not so, and therefore in a free fishery a man has a property in the fish before they are caught, but in a common of piscary not till afterwards; and in the Year Book, 13 H. 8 (*f*), Inglefield, J. said, "that a man having a common of fishery in another's land cannot cut the grass growing on the bank."

Miscellaneous points.

It has been said that a fishery cannot be ancient demesne as the soil may, for nothing is ancient demesne but that which may be held (*g*). That an assize lies for a several fishery; that it may be demanded by a præcipe. that a quod

122. 127. b. n. 7. to 122. a. —Schultes on Aq. Rights, 62.

(*b*) 2 Salk. 637. post, Appendix, 975.

(*c*) 5 Burr. 2814. post, Appendix, 1161.

(*d*) Post, Appendix, 1325. 743. 759.

(*e*) 2 Bla. Com. 39.—Fitzh. Nat. Brev. 88.—Smith v. Kempe, 2 Salk. 637. post, Appendix, 975.

(*f*) P. 15. post, Append. 811.

(*g*) Year Book, 40 Edw.

3. p. 45. post, Appendix, 711.

permittat lies, or a monstaverunt, or a writ de rationabilibus divisis (*h*), and that a fishery may be extended under a statute staple (*i*). And in a recent case it was said by Mr. Justice Ashhurst, that there is no doubt, but that a fishery is a tenement, and trespass will lie for an injury to it, and it may be recovered in ejectment, and an assize will certainly lie for a piscary, because it is in the language of the law proficuum in certo loco capiendum (*k*). However, according to several prior decisions, an ejectment de piscaria in such a river will not lie, because it is only a profit appendre (*l*). But in the case of *Rex v. Old Alresford* (*m*), where a party held under a parol agreement the fishing of a pond with the grates, &c. also all the spear, sedge, flags, and rushes growing in and about the said pond, it was decided that he held a tenement and gained a settlement, because the Court would consider that the fishery and soil passed together; and Mr. Justice Buller said, “The fact of letting a fishery is sufficient, and we must presume that the soil passed along with it, though I am by no means ready to allow, that if it had been any

Miscellaneous points.

(*h*) *The Case of the Fishery of Banne*, Davy's Rep. 55. post, Appen. 858.—Com. Dig. Piscary.—Co. Litt. 127. in notes.

(*i*) Post, Appen. 723.—Ante, 288.

(*k*) *Rex v. Old Alresford*, 1 Term Rep. 358. post, Appen. 1218.—Run. Eject. 131.

(*l*) *Molineux v. Molineux*, Cro. Jac. 146. post, Appendix, 851.—*Herbert v. Laughlayn*, Cro. Car. 492.—1 Roll. Abr. 784.—Run. Eject. 131.—2 Selwyn, 2 ed. 729.

(*m*) 1 Term Rep. 358. post, Appen. 1218.—2 Nolan. 21.



Miscellaneous points.

other kind of fishery it would not have given a settlement." In a case in Hardress' Reports (*n*) in trespass quare clausum fregit, the defendant justified, because he had a right of fishing there by prescription, but did not set forth what kind of fishery he claimed, whether free, several, or common of fishery, nor whether he had it, as appertaining to a manor, messuage, &c. or not, but made it a mere personal thing, and for that reason the plea was held bad by the Court. For there is a difference between an easement or liberty only and an interest. An easement, as a way, &c. may be claimed without shewing to what it appertains, but a common, &c. which is an interest, cannot. But in the Banne case (*o*) a case was cited, where in an action of nuisance the plaintiff complained, that by the raising of a dam he was disturbed of his fishery, and an exception was taken to the count, that no freehold was thereby assigned to which a piscary was appendant, it was held, that piscary is a freehold in itself in which there is no occasion to shew to what freehold it is appendant. It may however be observed that in the ancient as well as modern entries, a several and free fishery are frequently prescribed for as appendant to a manor, messuage, &c. and a common of fishery can only be claimed in right of some real estate (*p*). It should seem with reference to the principle

(*n*) Page 407. Com. Dig. post, Append. 858.  
tit. Piscary, A.

(*o*) Davy's Rep. 58.

(*p*) Rastall Ent. 686.

of the decision (*q*), that in trespass for hunting in a free warren, the plaintiff is entitled to full costs, though the damages may be under 40s. the plaintiff would in an action of trespass for fishing in his free fishery in all cases be entitled to full costs. The Stat. 4 and 5 W. & M. c. 23. s. 10. (*r*), provides that if any inferior tradesman, apprentice, or other dissolute person shall presume to fish, he may be sued for his wilful trespass, and shall pay full costs of suit. The constructions upon this clause relative to hunting for game have already been considered and are equally applicable to this subject (*s*). It is usual, where a person of this description has been guilty of a trespass, to state in the declaration, that he was an inferior tradesman, &c. and if the plaintiff can prove his allegation, he will recover his full costs, however small the damages.

Miscellaneous points.

(*q*) Ante, 21.—Lord Dacre  
v. Tebb, 2 Bla. Rep. 1151.  
post, Append. 1166.

(*r*) Post, Append. 861.  
(*s*) Ante, 88, 232.

## CHAPTER III.

## OF THE CRIMINAL PROCEEDINGS AND PENALTIES FOR INJURIES TO PRIVATE FISHERIES.

THE injuries which may be committed to *private* fisheries are punishable either at common law, or by different statutes. At common law no trespass to fisheries was punishable criminally, unless the fish were taken from some pond, trunk, or other enclosed place, or the offender was guilty of a forcible entry (*a*), and no indictment or other criminal proceeding was sustainable either for a conspiracy to fish (*b*), or for breaking down the heads or mounds of ponds, or for taking fish out of a river or stream, and the owner of a fishery could merely distrain the nets of a trespasser damage feasant, and could not take them for his own use, or destroy them (*c*). Though for taking fish out of a trunk or a pond in private enclosed property, and where the fish might be taken at any time at the pleasure of the owner, an indictment was always sustainable at common law. But by various statutes, trespasses in fisheries are peculiarly punishable, and

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(*a*) 8 Term Rep. 357.

(*c*) Reynell v. Chamber-

(*b*) The King v. Turner, noon, Cro. Car. 228. post, 13 East. 228. post, Append. Appendix, 924.  
1372.

the breaking down the mounds of ponds maliciously, and the stealing of fish out of waters in enclosed grounds is declared a felony; and offenders taking them out of waters in unenclosed grounds are subject to penalties, and the owners of fisheries and ponds are authorized to seize the nets and fishing tackle of trespassers, and to keep them for their own use, or to destroy them, as they may think fit. We will consider the existing regulations at common law and by various statutes.

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#### 1. PUNISHMENTS AT COMMON LAW.

LARCENY cannot in general be committed of animals *feræ naturæ*, and unreclaimed, such as fish in a river or open pond, although a person may have an exclusive right *ratione loci aut privilegii*, to take them if he can in those places. But if they are dead, or confined, and may serve for food, it is otherwise, even at common law; for of fish in a trunk or net, or as it should seem in any other enclosed place which is private property, and where they may be taken at the pleasure of the owner at any time, larceny may be committed (*d*).

It has been doubted, whether at common law larceny can be committed of fish in a pond, it is admitted that it may be, if they be confined in a trunk or net, because they are then restrained

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(*d*) 2 East. Pl. Cr. 607.



of their natural liberty, and it seems difficult not to extend the application of the same reason to the case of fish in a pond, the pond being private enclosed property, and the fish liable to be taken at any time according to the pleasure of the owner (*e*). Lambert says (*f*) fisheries in streams and rivers are nullius bona, et occupanti conceduntur; but he and others agree that it may be felony to take them in a trunk, stew, or pond; for a man hath such a possession of them, that by their restraint they cannot without help use their nature, and forsake him. So Lord Coke (*g*) says, "Larceny may be committed of fish in a trunk or pond, because they are not at their natural liberty, but as it were in a pond. And Hawkins considers it clear that taking fish out of a pond is felony (*h*).

In the Year Book, 18 Edw. 3. (*i*), it was said, that a person may be indicted of felony for taking pike, or tench, out of a pond, or trunk, because the property in them was always in him to whom the pond belonged, inasmuch as they could not go out, but he might take them at his pleasure; otherwise, if they were taken in a river. The case of Grey v. Bartholomew (*k*) was a question merely between the heir and executor, which of them should have fish which had been put into the pond by the testator for store, and taken out

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(*e*) 2 East. Pl. Cr. 610.

(*f*) Lamb. 274.

(*g*) 3 Inst. 109, 110.

(*h*) 1 Hawkins. Pl. Cr. ch. 33, s. 39.

(*i*) P. 8. Post, Appendix, 772.

(*k*) Owen. 20. post, Appendix, 843.—2 East. Pl. Cr. 610,

by the executors. And there it was adjudged that the heir was entitled to them, upon the same principle as, that he should have deer in a park.

In the *King v. Wetwang* (*l*) an indictment for taking out of the prosecutor's pond certain fishes called carp fishes, being of the goods and chattels of J. S. without specifying the number of fish, was held sufficient by two judges against the opinion of Twysden, J. the other judge not giving any opinion. In the *King v. Marshall* (*m*), the Court held that an indictment for fishing in a certain fishery of J. S. and taking and carrying away divers fish, was bad at common law, though sufficient under the Statute of Elizabeth. In the *Queen v. Steer and others* (*n*), the defendants were indicted for unlawfully fishing with nets in the prosecutor's pond, and taking and carrying away a certain number of carp, the goods and chattels of the prosecutor, and the Court said, "that if a man has a close pond, in which there are fish, he may call them *pisces suos* in an indictment, or he may not do it, at his pleasure, and either way is good, because, being in a close pond, the property *ratione loci* in them cannot be lost; but that, notwithstanding, he cannot call them as *bona et catalla* if they be not in trunks; for which objection, the indictment was held bad, though the Court refused to quash it

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(*l*) 1 Levinz. 203. post, pendix, 947.  
 Appendix, 937. (*n*) 6 Mod. 183. post,  
 (*m*) 2 Keb. 594. post, Appendix, 1004.

on motion, saying, “ that the offence of fishing in other men’s ponds, and taking away their fish, was too great to receive so much countenance. In *Hundson’s case* (*o*), where the defendant was indicted for stealing gold and silver fish, *of the goods and chattels of A. T.*, out of a pond, contrary to the 5 Geo. 3. c. 14.; and it appeared that the pond was twenty yards in length and ten in breadth, and adjoining to the prosecutor’s house, it was objected that fish in an open pond are *feræ naturæ* unreclaimed, and not the property of any particular person, as they were laid to be in the indictment; and though all the judges held that the indictment was sufficient under the statute, without the allegation that the fish were the goods and chattels of any person, and that therefore that part of the indictment was surplusage, yet, if the indictment had been at common law for felony, it was the opinion of some of the judges that it should have described *what sort of a pond* it was, so that it might appear on the face of the indictment that taking fish out of such a pond was felony. In the case of the *King v. Wallford* (*p*), it was held that at common law felony cannot be committed in taking oysters off oyster-lays in an arm of the sea, though not produced there, but brought for sale. In consequence of this decision, a statute (*q*) was passed, rendering such an offence felony.

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(*o*) 2 East. Pl. Cr. 611. Appendix, 1314.  
 post, Appendix, 1177.

(*q*) 48 Geo. 3. c. 144.

(*p*) 5 Esp. Rep. 62. post, post, Appendix, 693.

## II. PENALTIES AND PUNISHMENTS BY STATUTE.

THE Statute 5 Geo. 3. c. 14. (*r*), principally regulates the penalties and punishments for the unlawful taking of fish, and virtually repeals several of the prior statutes. But as many of those previous regulations are still in force, and the decisions upon them may be applicable to the more modern provisions, it is advisable to take a concise view of the whole of the legislative provisions, and of the cases that have arisen upon them.

The Statute of Westminster the First (*s*) enacts, “ That trespassers in ponds, if attainted at the suit of the party, shall make large amends, and shall have three years imprisonment, and make fine to the king, and find surety not to repeat the trespass. This statute extended to all trespasses in ponds, whether they were within parks and other franchises or not; and a party was liable to punishment for fishing, though he took no fish (*t*); and the statute did not deprive party of his common law remedy (*u*). But this statute is virtually repealed by subsequent regulations.

(*r*) Post, Appendix, 610 199, 200.  
to 615. (*t*) 2 Inst. 200.  
(*s*) 3 Edw. 1. c. 20. post, (*u*) Year Book, 15 Edw.  
Appendix, 357. See this sta- 2. p. 453. post, Appendix,  
tute observed upon in 2 Inst. 704.



The 31 Hen. 8. c. 2. (x) enacts, "That all manner of fishing with any nets, hooks, or baits, in any several pond, stew, or mote, with an intent to steal fish out of the same in the night-time, and the breaking down the heads of ponds, shall be deemed a felony." And the second section enacts, "That if any person shall fish in the day-time in any several pond, stew, or mote, with any manner of nets, hooks, or baits, against the will of the owner, not having any manner of colour of title so to do, he shall be imprisoned three months, and then find surety for his good behaviour." But this statute, so far as relates to the offence as to fishing in the night-time, and breaking down the heads of ponds, was repealed by the 1 Edw. 6. c. 12. which repeals all statutes creating felonies passed since the 1 Hen. 8.

The 5 Eliz. c. 21. s. 1. (y) enacts, "That if any person shall, by day or night, unlawfully, without authority, break, cut down, cut out, or destroy any head or dam of any ponds, pools, motes, stagnes, stews, or several pits, whercin fish are, or shall wrongfully fish therein, to the intent to destroy, kill, take, or steal away any of the same fish, against the will, mind, or pleasure of the owner, not having any lawful title or authority so to do, and shall be convicted at the suit of the Queen, or the party grieved, he shall be imprisoned three months, and pay treble damages to the party grieved, and find sureties for

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(x) Post, Appendix, 385.

(y) Post, Appendix, 408.

his good behaviour." And the fifth section enables the party grieved to proceed for the recovery of his treble damages, either before justices of oyer or assize, and of the peace, or in any Court of Record. An indictment upon this statute, stating that the defendant's *vi et armis piscerunt* in a certain fishery, and not saying "without the licence of the owner, and unlawfully," was held bad, on account of the insensibility of the word *piscerunt* (*z*). But in a subsequent case (*a*), the Court held that the insensibility of that word would not vitiate an indictment. The offence of breaking down the head of a pond, with intent to steal the fish, appears to be still indictable under this statute (*b*).

The 22 and 23 C. 2. c. 25. s. 7. (*c*) enacts, "That whoever shall use any casting or other net, or any angle, hair noose, troll, or spear, or shall lay any weirs, pots, nets, fish-hooks, or any other engines, or shall take any fish by any means or device whatever, in any river, stew, pond, mote, or other several waters, or rivers, or shall be aiding or assisting thereunto, without the consent of the owner, he shall render compensation not exceeding treble damages, and shall also pay, not exceeding 10s. to the use of the poor; and justices may seize and destroy the nets, &c.; but the party may appeal to the

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(*z*) The King v. Marshall, 1004.

2 Keb. 594. post, Appendix, 947.

(*b*) See observations on Ross's case, 2 East. Pl. Cr.

(*a*) The Queen v. Steer, 1067. post, Appendix, 1113.

6 Mod. 183. post, Appendix,

(*c*) Post, Appendix, 449.

quarter sessions, which shall be final, unless title to any land, royalty, or fishery, is concerned therein." In the *King v. Mallinson* (*d*), the information and conviction on this statute unnecessarily negatived all the qualifications required for killing game, and the defendant's being a maker of nets, or owner of a fishery, or being a fisherman, or his apprentice, or otherwise authorized to take or kill fish, but merely stated that the defendant unlawfully took and killed ten trouts contrary to the form of the Statute; and the Court held the conviction bad on several grounds, and principally for not shewing that the defendant had not the licence or consent of the owner of the fishery, or that the fish were not his own; for the offence intended by the Act, was the invading another man's property, and not merely a prohibition against unqualified persons killing fish, as under the Game Laws.

The 4 and 5 W. & M. c 23. s. 5. (*e*) enacts, "That no person, except the owner or occupier of a fishery, shall have or keep any net, angle, or other engine for the taking of fish, other than the makers and sellers thereof." And it authorizes "the owner or occupier of any river or fishery, and any person authorized by him, to seize, detain, and keep to his own use, every net, angle, and other engine, which he shall find used, or laid, or in the custody or possession of any

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(*d*) 2 Burr. 679. post, Appendix, 1132. See also the *King v. Corden*, 4 Burr. 2279. post, Appendix, 1154. This was on 5 Geo. 3. c. 14. (*e*) Post, Appendix, 462.

person fishing in any river or fishery, without the consent of the owner or occupier." It also authorizes "any person, by warrant, under the hand and seal of a justice of peace, to search, in the day-time, the houses, out-houses, or other places, of any person prohibited to keep the same, and who shall be suspected of having in his possession any such net, angle, or other engine, and to seize, detain, and keep the same to his own use, or to cut in pieces or destroy the same. But this shall not extend to fishermen authorized to fish in navigable rivers, or waters, with lawful nets." Though, in the enacting part of this statute, it only mentions owner or occupier of a *river or fishery*, yet, from the recital, it appears to have been the object of the legislature to protect ponds, as well as all other waters, from depredations. The third section of this statute empowers "every constable, head-borough, or tithing-man, thereunto authorized by warrant from a justice, to search the house or out-houses of any suspected persons not qualified, as therein mentioned; and if any fish shall, on such search, be found, the offender shall be carried before a justice of the peace, and he do not give a good account how he came by such fish, he shall forfeit for every fish not less than 5s. nor exceeding 20s., half to the informer, and half to the poor of the parish." The eighth section provides, "that where any offender shall be punished under that act, he shall not be prosecuted under any other."



The power given by this statute to the owner of fisheries to seize, and to keep, or destroy, the nets of persons unqualified to have them, and who are trespassing in fisheries, appears to be still in force, and alters the common law, by which we have seen the owner of a fishery could merely distrain the nets damage feasant, and was liable to an action of trespass if he cut them (*f*).

The 9 Geo. 1. c. 22. (*g*) makes the "stealing of fish out of any river, or pond, by persons armed and disguised, or the unlawfully and maliciously breaking down the head or mound of any fish-pond by any person, whether armed and disguised or not, whereby the fish shall be lost, or destroyed, or the forcibly rescuing of such offender, or procuring such offence to be committed, a felony, without benefit of clergy." But with reference to the decision upon the Act against deer-stealing, 16 Geo. 3. c. 30. this statute, so far as relates to the stealing of fish, is to be considered as virtually repealed by the 5 Geo. 3. c. 14., which inflicts a milder punishment (*h*). And though this last act contains no regulation as to the breaking of the heads and

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(*f*) Ante, 308.—*Reynell v. Champernoon*, Cro. Car. 228. post, Appendix, 924.

(*g*) Post, Appendix, 515. See constructions on this Act, 2 East. Pl. Cr. 610. 1065. and post, Appendix, 1272.—The 37 H. 8. c. 6. s. 4. subjected a person who mali-

ciously cut the head of a pond, &c. to the forfeiture of treble damages, and 10% to the king, 2 East. Pl. Cr. 1066.

(*h*) *Rex v. Davis*, 2 Leach. Cr. Law Cases, 306. post, Appendix, 1200.

mounds of ponds, yet it seems to have been considered, in Ross's case (*i*), that it virtually repeals the above enactment as to breaking down the head or mound of a fish-pond ; and Mr. East observes that, perhaps the before-mentioned Statute of 5 Eliz. still affords a criminal proceeding for such offence when committed with an intent to steal the fish (*k*). In the last-mentioned case it was also held that the breaking down the head or mound of a fish-pond, with a view of letting the water out, in order more effectually to steal the fish, was not an offence within the Black Act, which relates only to the *maliciously* breaking down such head, whereby the fish shall be lost, or destroyed. It seems, however, difficult to understand how the 5 Geo. 3. which we have seen contains no regulation as to the *maliciously* breaking down the mound of a pond, can be considered as repealing the 9 Geo. 1. which creates the offence.

The last and principal statute relating to offences committed in private fisheries, is the 5 Geo. 3. c. 14. (*l*), which makes it a "felony to steal fish out of any river, pond, or other water, in any park, or paddock, fenced in and enclosed, or any garden, orchard, or yard adjoining or belonging to any dwelling-house, and subjects the offender, and persons aiding and assisting, or receiving or buying any such fish, knowing the

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(*i*) 2 East. Pl. Cr. 1067. s. 4. ante, 314. & 318. n. g. post, Appendix, 1272.

(*l*) Post, Appendix, 610.

(*k*) See 37 H. 8. c. 6.

same to have been stolen, to transportation for seven years." And the third section subjects a person "who takes, or endeavours to take, any fish in any river or stream, pond, pool, or other water, *not being* in any park, or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling-house, *but being in any other enclosed ground*, which shall be private property, to a penalty of 5*l.* to the owner of the fishery of such river or stream, pond, or other water, recoverable before a magistrate, or by action of debt, or by information in either of the Courts at Westminster; the action to be commenced within six calendar months." The fifth section provides, "that no person shall be liable to the penalties of the Act who has a just right, or claim, to take, kill, or carry away the fish." And the seventh section provides, "that persons convicted under this Act, shall not be liable to be prosecuted under any other."

Upon the *first* section of this statute, it was held (*m*), that an indictment, charging the defendant with unlawfully entering the garden of A. T. adjoining and belonging to her dwelling-house, in which was a certain pond used for keeping fish, and, without A. T.'s consent, with a certain net stealing and taking out of the said pond a certain quantity of live gold and silver fish, of the *goods and chattels* of A. T., against the form of the statute, was good. For that, al-

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(*m*) *Hudson's case*, 2 *pendix*, 1177.  
East. Pl. Cr. 611. post, Ap.

though fish in an open pond were *feræ naturæ*, and therefore the allegation that the fish were the goods and chattels of A. T. might be incorrect, had the indictment been at common law, yet that they might be rejected as surplusage, the indictment being in other respects sufficient upon this statute. It should seem, that if the right to a fishery be in dispute, and one of the contending parties has filed a bill in equity to establish his right, that the Chancellor would grant an injunction to prevent him, at the same time, from prosecuting upon this statute (*n*).

In the *King v. Corden* (*o*), a conviction upon the third section of this statute was quashed, for not shewing that the fishing was without the consent of the owner; and it was held, that an allegation that the defendant had not any just right or claim to take, kill, or carry away the fish, was too general, and not a sufficient negative of the defendant's having fished without licence of the owner; though, if he had been the complainant, that might have shewn his dissent. In the case of the *King v. Edwards* (*p*), a conviction upon this statute was objected to, on the ground that it did not state that the complaint was made by the owner, or at his instance, which it was insisted was necessary, because the object of the statute was to make compensation to the owner for the private injury, by giving him the penalty; and

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(*n*) *Lord Mayor of York v. Pilkington*, 9 Mod. 273. post, Appendix, 1089.  
 (*o*) 4 Burr. 2279. post, Appendix, 1154.  
 (*p*) 1 East. 278. post, Appendix, 1273.



that, therefore, a magistrate has no jurisdiction to take cognizance of a complaint by a common informer ; for the fourth section gives the owner an option either to prosecute before a magistrate for the penalty, or to bring his action for it ; which option would be taken away if a third person may elect for him, against his consent, to lay the information before a magistrate ; but the Court gave no opinion upon this objection, the conviction being quashed on another ground. Another objection was taken in the same case, upon which, however, the Court did not decide, namely, that the evidence of a third person, stated to prove that the fishing was without the consent of the owner, ought not to have been received, since no third person could swear positively to that fact. And the decision (*q*) upon the Act against hunting deer, if the same words had been used, seems in some measure to countenance this objection ; for it was there held that, to support an indictment for coursing deer in an enclosed ground, it is necessary, on the part of the prosecution, to call the owner of the deer as a witness, to prove that he did not give his consent to the prisoner to course them. But if both these objections (upon which we have seen the Court gave no opinion) were to prevail, this difficulty would ensue, that as the statute requires the conviction to be founded on the oath of one or more *credible* witness or witnesses, and also gives the penalty to

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(*q*) *Rex v. Rogers*, 2 1360.  
Camp. 654. post, Appendix,

the owner, and as it is now settled that an informer, or party, to whom a penalty is given, is not in general a credible witness (*r*), no conviction on this statute before a magistrate could take place. But there appears to have been a misapprehension in supposing that it is necessary to shew in the information, or by evidence on the part of the *informer*, on the 5 Geo. 3. c. 14. that the fishing was without the consent of the owner. For though such consent, if proved by the defendant, would undoubtedly constitute a defence, yet the third section omits the words, "without the consent of the owner or owners thereof," which are in the first section, and which are also to be found in the seventh section of the 22 and 23 C. 2. c. 25. And it is probable that the decision in the *King v. Mallinson* (*s*), upon the last-mentioned statute, induced the legislature *purposely* to omit those words in the third section of the 5 Geo. 3. c. 14. Hence it should seem that the information should be by the owner of the fishery, or at his instance, and that, in strictness, it is not necessary for him to prove that he did not consent, because that will be presumed till the contrary be shewn. The defendant will, however, be at liberty to exculpate himself, by shewing an authority from the owner. It must, however, be confessed, that in the before-mentioned case of the *King v. Cor-den* (*t*) the Court seem to have considered it ne-

(*r*) Ante, 199.

(*t*) 4 Burr. 2279. post,

(*s*) 2 Burr. 679. post, Appendix, 1154.

pendi x, 1132.

necessary that it should appear that the owner did not consent to the fishing ; and therefore it is at least prudent, in support of an information upon this section of the statute, to be prepared to prove that the owner did not consent, and to establish that fact, as well by the testimony of the owner as of some other disinterested person, and to state such evidence in the conviction.

A conviction upon this statute must, like all others, expressly shew the offence to have been committed within the jurisdiction of the convicting magistrate. And therefore a conviction for fishing without the consent of the owner, in part of a certain stream, " which runneth between B., in the parish of A., in the county of W., and C., in the same parish and county," was quashed, because it did not appear that the intermediate course of the stream between the two termini, in which the offence was alleged to be committed, was in the county of W. ; and the Court said they could not presume that the place where the offence was committed, was within the jurisdiction of the convicting magistrate, but it must expressly so appear, and that it did not follow that the intermediate course of the stream was in the same county with the two termini mentioned, the fact being often otherwise. Under the sixth section of this statute, it was held, in the case of *Kinnersley v. Orpe* (*u*) that a person who fishes in a fishery belonging to another, but to which he

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(*u*) Dougl. 317. post, Appendix, 1170.

has a claim for the purpose of giving occasion to an action to try the right, is not liable to the penalty. And *Buller*, J. observed, that if the words "just right or claim," were to be construed as requiring an incontrovertible title to the fishery, the clause of exception must be read right *and* claim, instead of right *or* claim, which would be contrary to the words and meaning of the statute. But with reference to the determinations upon the qualification of a lord of a manor (*x*), it should seem that the party claiming the right must at least have some colour of title to the fishery.

In other respects the proceedings by action (*y*), information in the Courts at Westminster (*z*), and by conviction before a magistrate (*a*), are affected by the same rules as those relating to the recovery of penalties for offences against the Game Laws.

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(*x*) Ante, 46, 7.

(*y*) Ante, 172 to 184.

(*z*) Ante, 185 to 189.

(*a*) Ante, 189 to 223.

FINIS.





# APPENDIX.

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## EXTRACTS FROM MAGNA CHARTA, MADE A. D. 1215.

A. D. 1215.

CONFIRMED BY 9 HEN. III. AND 25 EDW. I.

*See the Charter as granted by King John, A. D. 1215, in 1 Vol. Rap. Hist. England, 285, and as confirmed by Edward I. in 1 Vol. Statutes at Large, p. 1.*

### DEFENDING OF BANKS.

No banks shall be defended from henceforth, but such as were in defence in the time of King Henry our grandfather, by the same places and the same bounds as they were wont to be in his time. (*See Comments on this Chapter, 2 Inst. 30.*)

### IN WHAT PLACES WEARS SHALL BE PUT DOWN.

All wears from henceforth shall be utterly put down by Thames and Medway, and through all England, except by the sea-coast. (*Confirmed and amended by 12 Edw. 4. c. 7.—See 2 Inst. 38.—10 Co. 138.—13 Co. 35.*)

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## CHARTA FORESTÆ.

AS MADE A. D. 1215. AND CONFIRMED BY 9 HEN. III.  
28 EDW. I. AND 52 HEN. 3. C. 5.

*See the Charter of Forests granted by King John, with notes in 1 Rapin's Hist. England, 294, and as confirmed by Edw. 1. in 1 Vol. Statutes at Large, p. 11.*

A. D. 1215. CAP. I. CERTAIN GROUNDS SHALL BE DISAFFORESTED.

Forests to be  
disafforested,  
&c.

We will that all forests, which King Henry our grandfather afforested, shall be viewed by good and lawful men. And if he have made forest of any other wood more than of his own demesne, whereby the owner of the wood hath hurt, forthwith it shall be disafforested. And if he have made forest of his own wood, then it shall remain forest, saving the common of herbage, and of other things in the same forests, to them which before were accustomed to have the same. (*Vid. 4 Co. Inst. 306. Jurisdiction of Forest Courts per totum. 3 Buls. 213.*)

## CAP. II. WHO ARE BOUND TO THE SUMMONS OF THE FOREST.

Who are  
bound to the  
summons of  
the forest.

Men that dwell out of the forest from henceforth shall not come before the justicers of our forest by common summons, unless they be impleaded there, or be sureties for some others that were attached for the forest. (*Co. Inst. 2 par. 310.*)

## CAP. III. CERTAIN WOODS MADE FOREST SHALL BE DISAFFORESTED.

What woods  
to be disaffo-  
rested.

All woods which have been made forest by King Richard our uncle, or by King John our father, until our first coronation, shall be forthwith disafforested, unless it be our demesne wood.

## CAP. IV. NO PURPRESTURE, WASTE, OR ASSERT SHALL BE MADE IN FORESTS.

Persons hav-  
ing woods in  
forests freed  
from pur-  
prestures,&c.

All archbishops, bishops, abbots, priors, earls, barons, knights, and other our freeholders, which have their woods in forests, shall have their woods as they had them at the first coronation of King Henry our grandfather, so that they shall be quit for ever of all purpres-

tures, wastes, and asserts, made in those woods after that A. D. 1215. time, until the beginning of the second year of our coronation: and those that from henceforth do make purpresture without our licence, or waste or assert in the same, shall answer unto us for the same wastes, purprestures, and asserts. (4 Co. Inst. 307.)

CAP. V. WHEN RANGERS SHALL MAKE THEIR RANGE  
IN THE FOREST.

Our rangers shall go through the forest to make <sup>When ranges</sup> range, as it hath been accustomed at the time of the first <sup>to be made.</sup> coronation of King Henry our grandfather, and not otherwise.

CAP. VI. LAWING OF DOGS IN FORESTS.

The enquiry or view for lawing of dogs within our <sup>Lawing of</sup> forest shall be made from henceforth when the range is <sup>dogs in fo-</sup> made, that is to say, from three year to three year, and <sup>rests.</sup> then it shall be done by the view and testimony of lawful men, and not otherwise. And he whose dog is not lawed, and so found, shall pay for his amerciament three shillings. And from henceforth no oxe shall be taken for lawing of dogs. And such lawing shall be done by the assize commonly used, that is to say, that three claws of the fore foot shall be cut off by the skin. But from henceforth such lawing of dogs shall not be, but in places where it hath been accustomed from the time of the first coronation of the foresaid King Henry our grandfather. (4 Co. Inst. 289. and 308.)

CAP. VII. IN WHAT CASES ONLY GATHERING SHALL  
BE IN FORESTS.

No forester or bedel from henceforth shall make scotal, <sup>To prevent</sup> or gather garbe, or oats, or any corn, lamb, or pig, nor <sup>extortion by</sup> shall make any gathering, but by the view and oath of <sup>foresters, &c.</sup> the twelve rangers, when they shall make their range.



A. D. 1215. So many foresters shall be assigned to the keeping of the forests, as reasonably shall seem sufficient for the keeping of the same. (Enforced by *St. 25 Ed. 3. St. 5 c. 7. See 4 Inst. 292.*)

CAP. VIII. WHEN SWANIMOTES SHALL BE KEPT, AND WHO SHALL REPAIR TO THEM.

When and how many swanimotes shall be kept, and who to attend them.

No swanimote from henceforth shall be kept within this our realm, but thrice in the year, *viz.* the beginning of fifteen days afore Michaelmas, when that our gest-takers or walkers of our woods come together to take agestment in our demesne woods; and about the Feast of St. Martin, when that our gest-takers shall receive our pawnage. And to these two swanimotes shall come together our foresters, vierders, gest-takers, and none other by distress. And the third swanimote shall be kept in the beginning of fifteen days before the Feast of St. John Baptist, when that our gest-takers do meet to hunt our deer. And at this swanimote shall meet our foresters, vierders, and none other by distress. Moreover, every forty days through the year, our foresters and vierders shall meet to see the attachments of the forest, as well for green-hue as for hunting, by the presentments of the same foresters, and before them attached. And the said swanimotes shall not be kept, but within the counties in which they have used to be kept. (*4 Co. Inst. 289. and 313. 316.*)

CAP. IX. WHO MAY TAKE AGISTMENT AND PAWNAGE IN FORESTS.

Liberty to use woods.

Every freeman may agest his own wood within our forest at his pleasure, and shall take his pawnage. Also we do grant, that every freeman may drive his swine freely without impediment through our demesne woods, to agest them in their own woods, or else where they will. And if the swine of any freeman lie one night

within our forest, there shall be no occasion taken there- A. D. 1215.  
of, whereby he may lose any thing of his own.

**CAP. X. PUNISHMENT FOR KILLING THE KING'S DEER.**

No man from henceforth shall lose either life or mem- The punish-  
ment for  
killing of the  
king's deer.  
ber for killing of our deer : but if any man be taken, and convict for taking of our venison, he shall make a grievous fine, if he have any thing whereof : and if he have nothing to lose, he shall be imprisoned a year and a day. And after the year and day expired (if he can find sufficient sureties) he shall be delivered ; and if not, he shall abjure the realm of England. (*St. 1 Ed. 3. st. 1. c. 8. 1 Hen. 6. c. 7. 4 H. 7. c. 6. 3 Ed. 1. c. 20. 7 Rich. 2. c. 4. Regist. fo. 80. 4 Co. Inst. 313.*)

**CAP. XI. A NOBLEMAN MAY KILL A DEER IN THE FOREST.**

Whatsoever archbishop, bishop, earl, or baron, com- When noble-  
men, &c. may  
kill deer in  
the king's  
forest.  
ing to us at our commandment, be passing by our forest, it shall be lawful for him to take and kill one or two of our deer, by view of our forester, if he be present, or else he shall cause one to blow a horn for him, that he seem not to steal our deer. And likewise they shall do returning from us, as it is aforesaid. (*4 Inst. 309.*)

**CAP. XII. HOW A FREEMAN MAY USE HIS LAND IN THE FOREST.**

Every freeman from henceforth without danger shall How a free-  
man may  
use his land  
in the forest.  
make in his own wood, or in his land, or in his water, which he hath within our forest, mills, springs, pools, marl-pits, dikes, or arable ground, without inclosing that arable ground, so that it be not to the annoyance of any of his neighbours.

A. D. 1215. CAP. XIII. HOW A FREEMAN MAY USE HIS LAND IN THE FOREST.

Freeman Every freeman shall have within his own woods, may have ayries of hawks, sparrow-hawks, falcons, eagles, and hawks, and honey in his woods; and shall have also the honey that is found within his woods.

CAP. XIV. WHO MAY TAKE CHIMINAGE OR TOLL IN A FOREST, FOR WHAT CAUSE, AND HOW MUCH.

Who may take chiminage or toll in a forest, for what cause, and how much. No forester from henceforth, which is not forester in fee, paying to us rent for his bailiwick, shall take any chiminage or toll within his bailiwick. But a forester in fee, paying us rent for his bailiwick, shall take chiminage, that is to say, for carriage by cart the half year two pence, and for another half year two pence, for an horse that beareth loads, every half year an halfpenny, and by another half year half a penny; and but of those only that come as merchants from without his bailiwick, by licence to buy bushes, timber, bark, coal, within his bailiwick, and to sell it again at their pleasure; but for none other carriage by cart chiminage shall be taken. Nor chiminage shall not be taken but in such places only where it hath been used to be. Those which bear upon their backs brushment, bark, or coal to sell, though it be their living, shall pay no chiminage to our foresters, except they take it within our demesne woods. (*See 4 Inst. 306.*)

CAP. XV. PARDON OF OUTLAWS OF TRESPASS WITHIN THE FOREST.

A pardon of out-laws of trespass within the forest. All that be out-lawed for the forest only, since the time of King Henry our grandfather, until our first coronation, shall come to our peace without let, and shall find to us sureties, that from henceforth they shall not trespass unto us within our forests.

CAP. XVI. HOW PLEA OF THE FOREST SHALL BE A. D. 1215.  
HOLDEN.

No constable, castelan, or any other, shall hold plea of forest, neither for green-hue nor hunting; but every forester in fee shall make attachments for pleas of forest, as well for green-hue as hunting, and shall present them to the vierders of the provinces. And when they be enrolled and inclosed under the seals of the vierders, they shall be presented to our chief justicers of our forest, when they shall come into those parts to hold the pleas of the forest, and before them they shall be determined. And these liberties of the forest we have granted to all men, saving to archbishops, bishops, abbots, priors, earls, barons, knights, and to other persons, as well spiritual as temporal, templars, and hospitallers, their liberties and free customs, as well within the forest as without, and in warrens and other places which they have had. All these liberties and customs, we, &c. as it followeth in the end of the Great Charter, and we do confirm and ratify these gifts, &c. (as in the end of the Great Charter.) See 4 Co. Inst. 289. and 291. 315.

How the  
pleas of the  
forest shall  
be holden.  
S. at. 1 Ed. 3.  
8.  
Amended by  
Stat. 7 R. 2.  
c. 3.

STAT. MERTON, 20 HEN. 3. C. 11. A. D. 1235.

A. D. 1235.

Concerning trespasses in parks and ponds, it is not yet discussed: for the lords demanded the imprisonment of such as they should take in their parks and ponds in their own prisons, which the king denied. Wherefore it is deferred. (Co. Inst. 2 par. 100.)

Lords shall  
not imprison  
offenders at  
their own  
wills, for  
trespasses in  
their parks  
and ponds.

STAT. WESTM. 1. 3 EDW. 1. C. 20. ANNO DOM. 1275. A. D. 1275.

It is provided also for trespassers in parks and ponds, that if any be thereof attainted at the suit of the party,

The punish-  
ment for of-  
fences com-



A. D. 1275. great and large amends shall be awarded according to the  
 mitted in trespass, and shall have three years imprisonment, and  
 parks and after shall make fine at the king's pleasure (if he have  
 ponds. whereof) and then shall find good surety, that after he  
 shall not commit like trespass. And if he have not  
 whereof to make fine, after three years imprisonment,  
 he shall find like surety: and if he cannot find like  
 surety, he shall abjure the realm. And if any being  
 guilty thereof be fugitive, and have no land nor tene-  
 ment sufficient (whereby he may be justified) so soon as  
 the king shall find it by enquest, he shall be proclaimed  
 from county to county; and if he come not, he shall be  
 out-lawed. It is provided also and agreed, that if none  
 do sue within a year and a day for the trespass done,  
 the king shall have the suit. And such as be found  
 guilty thereof by lawful enquest, shall be punished in  
 like manner in all points as above is said. And if any  
 such trespasser be attainted, that he hath taken tame  
 beasts, or other thing in the parks, by manner of rob-  
 bery, in coming, tarrying, or returning, let the common  
 law be executed upon him, as upon him that is attainted  
 of open theft and robbery, as well at the suit of the king,  
 as of the party. (*Stat. 9 H. 3. Stat. 2. c. 10, 11.*  
*altered by 1 Ed. 3. Stat. 1. c. 8. and see St. 1*  
*H. 7. c. 7. which makes hunting in parks, disguised,*  
*felony.)*

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A. D. 1285. STAT. WESTM. 2. C. 47. ANNO 13 EDW. 1. STAT. 3.  
 ANNO DOM. 1285.

The penalty  
 of taking sal-  
 mons at cer-  
 tain times of  
 the year.

It is provided that the waters of Humber, Owse,  
 Trent, Done, Aire, Derewent, Wherfe, Nidd, Yore,  
 Swale, Tese, Tine, Eden, and all other waters (where-  
 in salmons be taken) within the kingdom, shall be  
 in defence for taking salmons from the Nativity of our  
 Lady unto St. Martin's day. And that likewise young  
 salmons shall not be taken nor destroyed by nets, nor

by other engines at millpools, from the midst of April A. D. 1285.  
 unto the Nativity of St. John Baptist. And in places  
 where such rivers be, there shall be assigned conservators  
 of this statute, which being sworn, shall oftentimes see and  
 inquire of the offenders : and for the first trespass they  
 shall be punished by burning of their nets and engines :  
 and for the second time, they shall have imprisonment  
 for a quarter of a year : and for the third trespass, they  
 shall be imprisoned a whole year : and as their trespass  
 increaseth, so shall the punishment. (Confirmed by  
 13 R. 2. st. 1. c. 19. 17 R. 2. c. 9. St. 25 H. 8.  
 c. 7. and see 2 Inst. 477.)

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STAT. DE MALEFACTORIBUS IN PARCIS, ANNO 21 A. D. 1293.  
 EDW. 1. STAT. 2. ANNO DOM. 1293.

To the intent that trespassers in forest, chases, parks, In what  
 and warrens, may more warily fear hereafter to enter cases the kil-  
 and trespass in the same than they have heretofore, our ling of of-  
 Lord the King at his parliament after Easter the twenty- fenders in  
 first year of his reign, at the instance of the nobles of his forests,  
 realm, hath granted and commanded to be from hence- chases, or  
 forth firmly observed, that if any forester, parker, or warrens is  
 warrenor, shall find any trespassers wandering within his punishable,  
 liberty, intending to do damage therein, and that will in what not.  
 not yield themselves to the foresters, warrenors, or Co. Lit. 253  
 parkers, after hue and cry made to stand unto the C. Ent. 643.  
 peace, but do continue their malice, and disobeying the 20 Hen. 3.  
 king's peace, do flee, or defend themselves with force c. 11.  
 and arms : although such foresters, parkers, and warren- Edw. 1.  
 ors, or any other coming in their company, and aid- c. 20.  
 ing such foresters, parkers, and warrenors in the king's Dyer, 327.  
 peace, do kill any offender or offenders, being so found, 8 Co. 133.  
 either in arresting or taking them, or any of them, they 1 Hen. 7.  
 shall not be troubled upon the same before the king and c. 20.  
 his justices, or before any other the king's bailiffs, or

A. D. 1293. any other within any franchise or without; nor shall leese for so doing either life or limb, or suffer any other punishment, but shall enjoy the king's peace as they did before.

II. Notwithstanding, let all such foresters, parkers, warrenors, and all other beware, that by reason of any malice, discord, debate, or other evil will or hatred, had beforetime, they do not maliciously pretend against any person passing through their liberties, that they came thither for to trespass or misdooe, when of truth they did nothing nor were not found as trespassers, or intending to trespass, and so kill them: for if they do, and be convicted thereupon, the death of such persons shall be inquired, and execution shall be done in like manner, as is done for other of the king's subjects standing in his peace, and like as it ought to be done of right, and according to the law and custom of our realm.

A. D. 1305. **ORDINATIO FORESTÆ, MADE 33 EDW. I. STAT. 5.**  
**ANNO DOM. 1305.**

They whose woods are disafforested shall not have common or other easement in the forest. They which will return their woods into the forest, shall have common as they had before.

Whereas certain people that be put out of the forest by the purview, and by the grant of our Lord the King have made request at this parliament, that they might be acquitted of their charge, and of things that the foresters demand of them, as they were wont to be: our Lord the King answers, first, that where he has granted purview, that he is pleased that it should stand, in like manner as it was granted, albeit that the thing was sued and demanded in an evil point. Nevertheless he willeth and intendeth, that all his demcan lands, wheresoever they be, that have been of the crown, being returned by way of escheat or otherwise, shall have estate of free-chase and free-warren, and in such manner shall be saved and kept to his use for all manner

of beasts, and for all manner of things that pleaseth A. D. 1305.  
 him. And in right of them that have lands and tene-  
 ments disafforested for the said purview, and such as  
 demand to have common within the bounds of forests,  
 the intent and will of our Lord the King is, that from  
 henceforth (where purview is) they may claim to be quit  
 of charge of the forests. And whereas the king's beasts  
 cannot have their haunt and repair upon the ground dis-  
 afforested, as they had so long as they were within the  
 forests, that such folk shall not have common, nor  
 other easement within the bounds of the woods, nor of  
 the lands, the which remain in forest; but if any of  
 them that be disafforested by the purview, would rather  
 be within the forests as they were before, than to be out  
 of the forest as they be now: it pleaseth the king very  
 well, that they shall be received thereunto, so that they  
 may remain in their ancient estate, and shall have com-  
 mon and other easement, as well as they had before.  
 Whereupon our Lord the King willeth and command-  
 eth, that his justices of the forest on this side Trent,  
 and beyond Trent, in like manner shall keep and hold,  
 and cause to be kept and holden straitly the aforesaid  
 points within their liberties, in the form above-men-  
 tioned. (*See 16 Car. 1. c. 16. s. 9. 2 Co. Inst. 303.*)

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ORDINATIO FORESTÆ, MADE ANNO 34. EDW. 1. A. D. 1306.  
 STAT. 5. ANNO DOM. 1306.

I. First, We have ordained for ourselves and our heirs, <sup>How offences</sup>  
 that as to all trespasses hereafter to be done in our forests of <sup>done in the</sup>  
 green-hugh, and of hunting, the foresters within whose <sup>forest shall</sup>  
 bailiwicks such trespasses shall happen to be committed, <sup>be presented.</sup>  
 shall present the same at the next swanimote, before the  
 foresters, vierders, regards, agistors, and other mini-  
 sters of the same forest; and upon such presentations  
 there before the foresters, vierders, and all other mini-  
 sters aforesaid, by the oath as well of knights as of other



A. D. 1306. lawful and honest men, not suspected, of the nearest parts where the trespass so presented shall be done, the truth of the matter shall be lawfully enquired of; and, the truth so enquired of, the same presentations by the common accord and assent of all the ministers aforesaid, shall be solemnly confirmed and sealed with their seals. And if an indictment be in any other manner, it shall be adjudged void.

An officer dying or being absent, another shall be put in his place.

II. And if it happen any of the said foresters, regarding, or other ministers of the same forests do die, or by sickness or other means be hindered, whereby he cannot be present at the same swanimote, presently the justice of the same forest, or his lieutenant, shall put another in his place; so that the indictment may be made by all in form aforesaid. And that the officers which are to be placed, shall be put in as heretofore it hath been used to be: except the vierderers, who shall be ordained by election and by our writ.

No forester shall be put in a Jury.

III. And we will that none of the foresaid ministers shall hereafter be put in any assises, juries, or enquests to be taken without the forest. *Regist. Brev. fo. 183.*

The punishment of officers surcharging the forest.

IV. And if there be any surcharge found of the foresters, or by such other as take upon them to be officers of the forest, such surchargers shall be removed and imprisoned according to the discretion of the justice of the forest, or his lieutenant: and they by whom they were placed shall be also punished at our pleasure. And at every swanimote inquisition shall be made of surcharges of foresters, and other ministers of the forest, and of their oppressions done to our people; and reformation and punishment shall be done, as it is ordained before.

Grounds disafforested.

V. As touching them that committed trespasses of greenhugh or hunting, at such time as the forest was disafforested: we will that those offences shall be pardoned, saving such trespasses which were committed in that

part which doth remain forest: yet so, as that the hedges and ditches made in the mean time shall be wholly cast down, removed, and avoided: saving our arrentations, which we will have remain according to the assise of the forest. The wood which is felled and cut down shall be removed, and the wood which is standing shall remain in the forest. And if any such wood yet standing be sold, it shall remain in the forest, and the seller shall satisfie the buyer according to the quantity of the wood standing in the forest, and so sold in the mean time, as he received of him. A. D. 1306.

VI. We will also that our justice of the forest, or his lieutenant, in the presence of our treasurer, and by his assent, shall have authority to take fines and amerciaments of those which be indicted for trespasses committed in our forests, and not tarry for the eyre of the justice. And moreover we will, that they which had common of pasture in the forest before the perambulation was made, and which were hereafter returned into the forest, and that were restrained of common by the said perambulation, shall have their common of pasture hereafter in the forest, as freely and largely as they were wont to have before the perambulation made. Saving our arrentations in form aforesaid. In witness whereof, &c. at *Westminster*, 28 die *Maii*, Anno 34 *Edwardi primi*, *Regist. fol. 80.* Assessing  
fines for  
trespasses in  
the forest.

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PREROGATIVA REGIS, MADE ANNO 17 EDW. 2. ST. 1. A. D. 1324.  
AND A. D. 1324.

CAP. XI. HIS PREROGATIVE IN HAVING THE WRECK  
OF THE SEA, WHALES, AND STURGEONS.

Also the king shall have wreck of the sea throughout the realm, whales and sturgeons taken in the sea or elsewhere within the realm, except in certain places privileged by the king. 5 Co. 106.  
108.  
1 H. 7. f. 23.  
11 H. 4. f. 16.  
9 H. 7. f. 20.  
35 H. 6. f. 27.

A. D. 1327.

1 EDW. 3. STAT. I. C. 8. A. D. 1327.

How he shall  
be used that  
is taken for  
any offence  
in the forest.

St. 3 Ed. 1.  
20.

St. 9 H. 3. st.

2. c. 10, 11,

4 16.

Whereas divers people be disinherited, ruined, and undone, by the chief keepers of the forests on this side Trent and beyond, and by other ministers, against the form of the great charter of the forest, and against the declaration made by King Edward, son of King Henry, in form following, that is to say : We will and grant for us and our heirs, that for any trespass done in our forest of vert and venison, the foresters in whose bailiwick such trespass shall be committed, shall present the same trespasses at the next swanimote before the foresters, vierders, regards, agisters, and other ministers of the same forest : and upon such presentment made before the said foresters, vierders, regards, and agisters, and other ministers aforesaid, as well by the oaths of knights, as by other discreet and lawful men, and not suspicious, of the parts adjoining or near where such offences shall be so presented, and where the truth may best and most fully be enquired, and the truth perfectly known, then such presentments by the common assent and consent of all the said ministers shall be solemnly written, and with their seals ensealed. And if any indictment be in any other manner made, the same shall be void. And therefore because the chief wardens of the forests have not observed the same form hitherto, it is agreed and ordained, that from henceforth no man shall be taken nor imprisoned for vert or venison, unless he be taken with the maner, or else indicted after the form before specified. And then the chief warden of the forest shall let him to mainprise, till the eyre of the forest, without any thing taken for his deliverance. And if the said warden will not so do, he shall have a writ out of the chancery, which hath been in old time ordained for such person indicted, to be at mainprise till the eyre. And if such warden, after he hath received

A remedy  
for the pri-  
soner if the  
warden of  
the forest  
will not bail  
him.

St. 7 R. 2. c. 4.  
Regist. p. 80.

Curth 78.



the writ, do not incontinently deliver such persons in- A. D. 1327.  
dicted to mainprise without taking any thing : then the  
plaintiff shall have a writ out of the chancery to the she-  
riff, to attach the said warden to be before the king at a  
certain day, to answer, wherefore he hath not replevied  
him that is so taken. And the sheriff (the vierders being  
called to him) shall deliver him that is so taken by good  
mainprise, in the presence of the vierders, and shall de-  
liver the names of the mainpernors to the same vierders,  
to answer in the eyre before the justices. And if the  
chief warden be thereof attainted, the plaintiffs shall  
have their treble damages awarded them, and the said  
warden shall be committed to prison, and ransomed at  
the king's will. And from henceforth it shall be written  
to them as to the chief wardens of the forest, because  
they may not be justices, nor have any record but in the  
eyre. Dated at Westminster, the seventh day of March,  
in the first year of the reign of the said King Edward  
that now is.

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I EDW. 3. STAT. 2. CHAP. 1. ANNO DOM. 1327.

I. First, That the great charter of the liberties, and A confirma-  
tion of char-  
ters, peram-  
bulation of  
forests.  
Charters  
thereof.  
16 Car. 1. c. 15.  
the charter of the forest be observed and kept in every  
article : and that the perambulations of the forest, in  
time of King Edward, grandfather to the king that now  
is, be from henceforth holden in the like form, as it was  
then riden and bounded. And thereupon a charter to  
be made to every shire, where it was riden and bounded.  
And in such places where it was not bounded, the  
king wills that it shall be bounded by good men and  
lawful, and that a charter be thereupon made, as afore  
is said.

II. Item, Every man that hath any wood within the Using of  
woods  
within the  
forest.  
forest, may take houseboot and hayboot in his said wood,  
without being attached for the same by any ministers of  
the forest, so that he do the same by the view of the



A. D. 1327. foresters. And because before this time in the time of King Edward, father to the king that now is, the king by evil counsellors caused to be seised into his hands by temporalities of divers bishops, with all their goods and chattels therein found, without any cause, and the same held in his hands by a long season, and continually thereof took the profits, to the great damage of the same bishops, wastes and destructions of all their castles, manors, parks, and woods: the king willeth and granteth that from henceforth it shall not be done.

The temporalities of bishops.

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A. D. 1350. A STATUTE OF PURVEYORS MADE ANNO 25 EDW. 3.  
STAT. 5. A. D. 1350.

VII. Moreover, It is accorded and stablished, that no forester, nor keeper of forest, or chase, nor any other minister, shall make or gather sustenance nor other gathering of victuals, nor other thing, by colour of their office, against any man's will, within their bailiwick, nor without, but that which is due of old right. *Charta de Foresta* 7.

“Keepers of a forest or chase shall gather nothing without the owner's good will.”

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A. D. 1360. 34 EDW. 3. ANNO DOM. 1360.

XXII. Item, It is accorded in this present parliament, that every person which findeth a fawlcoun, tarcellet, laner or lanaret, or other hawk, that is lost of their lord, that presently he bring the same to the sheriff of the county, and that the sheriff make proclamation in all the good towns in the county, that he hath such a hawk in his custody. And if the lord which lost the same, or any of his people, come to challenge it, and proveth reasonably that the same is his lord's, let him pay for the costs, and have the hawk. And if none come within four months to challenge it, that then the sheriff have the hawk, making gree to him that did take him, if he be a simpleman; and if he be a gentleman and of

“In what sort one man's hawk taken up by another shall be used.”

estate to have the hawk, that then the sheriff re-deliver to him the hawk, taking of him reasonable costs for the time that he had him in his custody. And if any man take such hawk, and the same conceal from the lord whose it was, or from his falkoners ; or whosoever taketh him from the lord, and thereof be attainted ; shall have imprisonment of two years, and yield to the lord the price of the hawk so concealed and carried away, if he have whereof ; and if not, he shall the longer abide in prison.

A. D. 1360.

Stealing a hawk.  
Enforced by 37 Edw. iii. c. 19. which makes the offence felony.

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37 EDW. 3. CHAP. 19. ANNO DOM. 1363.

A. D. 1363.

Item, Whereas it was another time ordained, that every person that findeth any falkon, tarcelet, laner, or laneret, or any other hawk, that is lost of his lord's, that presently he shall bring him to the sheriff of that county, and that the sheriff make proclamation in all the good towns of the county, that he hath such hawk in keeping, and if the lord which hath lost him, or any of his, come to challenge him, and prove reasonably that it is his lords, let him pay for his costs, and have the hawk, and if none come within four months for to challenge him, then the sheriff shall have the hawk, making gree to him that did take him, if he be a simpleman, and if he be a gentleman, and of estate to have the hawk, the sheriff shall re-deliver to him the hawk, taking of him reasonable costs for the time that he had him in his keeping : and if any hath taken such hawk, and the same conceal from the lord to whom the hawk is, or from his fawlkoners, or if any take him away from the lord, and thereof be attainted, he shall have two years imprisonment, and yield to the lord the price of the hawk so concealed or taken away, if he had whereof, and if not, he shall the longer abide in prison : notwithstanding this ordinance, the offenders doubt but

St. 34 Ed. 3. 22.

How each person shall use a hawk of another man's that he taketh up.

The concealing of a hawk is felony.

A. D. 1363. little to offend in this behalf: wherefore it is ordained, and by statute established in this present parliament, that if any steal any hawk, and the same carry away, not doing the ordinance aforesaid, it shall be done of him as of a thief that stealeth a horse or other thing (*Co. Inst. 3. par. 97. 4. par. 51.*)

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A. D. 1383.

7 RICHARD 2. ANNO DOM. 1383.

General protection of  
juries relating to forests.

Ch. III. Item, At the grievous complaint which is now made of the officers of the forest, it is assented and accorded, that no manner of jury shall be from henceforth compelled by any officer of the forest, or other person whatsoever, to travel from place to place out of the places where their charge is given to them, against their gree, nor by malice, or by menace, nor other duress, constrained to give their verdict of a trespass done in the forest, otherwise than their conscience shall clearly inform them: but they shall give their verdicts upon their charge, in the place where their charge is given them, as above is said. *St. 9 Hen. 3. 16. stat. 2. c. 16.*

None shall be taken or imprisoned by the officers of the forest without indictment, &c. *Regist. fo. 80.*

*9 Hen. 3. St. 2. c. 10, 11, and 16.*  
*1 Edw. 3, Stat. 1. c. 8.*

Ch. IV. Item, It is assented, that no man be taken nor imprisoned by any officer of the forest without due indictment, or being taken with the manour, or trespassing in the forest; nor shall be constrained to make any obligation or ransom to any officer of the forest, in any sort, against their agreement, and the assise of the forest. And if any do against this ordinance in any point, and thereof be attained, he shall pay to the party damnified their double damages, and fine and ransome to the king for his offence.

13 RICH. 2. CAP. 13. ANNO DOM. 1389. *Rep.* A. D. 1389.

NONE SHALL HUNT BUT THEY WHICH HAVE A SUFFICIENT LIVING.

Item, Forasmuch as divers artificers, labourers, and servants, and grooms, keep grey-hounds and other dogs, and on the holy days when good christian people be at church, hearing divine service, they go hunting in parks, warrens, and connigries of lords and others, to the very great destruction of the same, and sometime under such colour they make their assemblies, conferences, and conspiracies for to rise and disobey their allegiance: it is ordained and assented, that no manner of artificer, labourer, nor other lay-man, which hath not lands or tenements to the value of 40s. by year, nor any priest, nor other clerk, if he be not advanced to the value of 10l. by year, shall have or keep from henceforth any grey-hound, hound, nor other dog to hunt; nor shall they use fyrets, heys, nets, hare-pipes, nor cords, nor other engines for to take or destroy deer, hares, nor conies, nor other gentlemens game, upon pain of one year's imprisonment; and that the justices of peace have power to enquire, and shall enquire of the offenders in this behalf, and punish them by the pain aforesaid, (*St. 19 II.* *7. c. 11. Rast. pla. 405.—Sec 8 Eliz. c. 15. 33 Ed. 1. stat. 5.* *Justices of peace shall enquire of, and punish the offenders.* *None shall hunt but they which have a sufficient living.* *5 Mod. 307. 1 Salk. 212. 2 Buist. 60. Co. Jac. 321.*

13 RICH. 2. CAP. 19. ANNO DOM. 1389.

A CONFIRMATION OF THE STATUTE OF 13 EDW. 1.

C. 47. TOUCHING THE TAKING OF SALMONS.

Item, Whereas it is contained in the statute of Westminster the second, that young salmons shall not be taken nor destroyed by nets, nor by other engines, at mill-dams, from the midst of April till the nativity of St. John Baptist, upon a certain pain limited in the same *A confirmation of the statute of 13 Ed. 1. 47. touching the prohibiting of salmons to*



A. D. 1389. statute : it is accorded and assented, that the said statute be finally holden and kept, joyning to the same, that young salmons shall not be taken during the said time, at mill-dams nor in other places, upon the same pain.

There shall be no estate or condition that he be, shall from henceforth put in the waters of Thamise, Humber, Ouse, Trent, nor any other waters of the realm by the same time, nor in any other time of the year, any nets called stallers, nor other nets nor engines whatsoever they be, by the which the frye or the breed of the salmons, lampreys, or any other fish, may in any wise be taken or destroyed, upon the pain aforesaid. And also where it is contained in the same statute, that all the waters, in which salmons be taken within the realm, shall be put in defense as to the taking of salmons, from the day of the nativity of Our Lady until St. Martin's day : it is ordained and assented, that the waters of Lone, Wyre, Mersee, Rybbyl, and all other waters in the county of Lancaster, be put in defense, as to the taking of salmons, from Michaelmas day to the purification of Our Lady, and in no other time of the year, because that salmons be not seasonable in the said waters in the time aforesaid. And in the parts where such rivers be, there shall be assigned and sworn good and sufficient conservators of this statute, as it is ordained in the said statute of Westminster, and that they shall punish the offenders after the pain contained in the same statute, without any favour thereof to be shewed. *St. 17 R. 2. c. 9.*

A. D. 1389. be finally holden and kept, joyning to the same, that young salmons shall not be taken during the said time, at mill-dams nor in other places, upon the same pain.

There shall be no estate or condition that he be, shall from henceforth put in the waters of Thamise, Humber, Ouse, Trent, nor any other waters of the realm by the same time, nor in any other time of the year, any nets called stallers, nor other nets nor engines whatsoever they be, by the which the frye or the breed of the salmons, lampreys, or any other fish, may in any wise be taken or destroyed, upon the pain aforesaid. And also where it is contained in the same statute, that all the waters, in which salmons be taken within the realm, shall be put in defense as to the taking of salmons, from the day of the nativity of Our Lady until St. Martin's day : it is ordained and assented, that the waters of Lone, Wyre, Mersee, Rybbyl, and all other waters in the county of Lancaster, be put in defense, as to the taking of salmons, from Michaelmas day to the purification of Our Lady, and in no other time of the year, because that salmons be not seasonable in the said waters in the time aforesaid. And in the parts where such rivers be, there shall be assigned and sworn good and sufficient conservators of this statute, as it is ordained in the said statute of Westminster, and that they shall punish the offenders after the pain contained in the same statute, without any favour thereof to be shewed. *St. 17 R. 2. c. 9.*

A. D. 1389. be finally holden and kept, joyning to the same, that young salmons shall not be taken during the said time, at mill-dams nor in other places, upon the same pain.

There shall be no estate or condition that he be, shall from henceforth put in the waters of Thamise, Humber, Ouse, Trent, nor any other waters of the realm by the same time, nor in any other time of the year, any nets called stallers, nor other nets nor engines whatsoever they be, by the which the frye or the breed of the salmons, lampreys, or any other fish, may in any wise be taken or destroyed, upon the pain aforesaid. And also where it is contained in the same statute, that all the waters, in which salmons be taken within the realm, shall be put in defense as to the taking of salmons, from the day of the nativity of Our Lady until St. Martin's day : it is ordained and assented, that the waters of Lone, Wyre, Mersee, Rybbyl, and all other waters in the county of Lancaster, be put in defense, as to the taking of salmons, from Michaelmas day to the purification of Our Lady, and in no other time of the year, because that salmons be not seasonable in the said waters in the time aforesaid. And in the parts where such rivers be, there shall be assigned and sworn good and sufficient conservators of this statute, as it is ordained in the said statute of Westminster, and that they shall punish the offenders after the pain contained in the same statute, without any favour thereof to be shewed. *St. 17 R. 2. c. 9.*

A. D. 1393.

17 RICHARD 2. CHAP. IX. ANNO DOM. 1393.

JUSTICES OF THE PEACE SHALL BE CONSERVATORS  
OF THE STATUTES MADE TOUCHING SALMONS.

*St. 13 Ed. 1.*

*St. 1. c. 47.*

Item, Where it is contained in the statute of Westminster the second, that young salmons shall not

be taken nor destroyed by nets, or by other engines at the stanks of mills, from the midst of April till the nativity of St. John the Baptist, upon a certain pain limited in the same statute: and whereas by a statute made the xiii. year of the king that now is, it was ordained, that the said statute of Westminster the second, should be firmly holden and kept, joyning to the same, that young salmons should not be taken at the mills, stanks, or elsewhere, upon the same pain. And that no fisher nor garthman, nor none other, of what estate or condition that he were, should not put from henceforth in the waters of Thamis, Humber, Ouse, Trent, nor none other water of the realm, by the same time, nor by none other time of the year, any nets called stalkers, nor other nets or engines whatsoever, whereby the frie or breed of salmons, lampreys, or of any other fish whatsoever, may in any wise be taken or destroyed, upon the pain aforesaid: and also it was rehearsed in the said statute, made the said thirteenth year, that where it is contained in the same statute of Westminster, that all the waters in which salmons be taken in the realm, shall be put in defence as to the taking of salmons from the day of the nativity of Our Lady, till St. Martin's day: it was ordained and assented in the said statute made in the said xiii. year, that the waters of Lone, Wire, Mersee, Ribbil, and all other waters in the county of Lancaster, should be put in defense as to the taking of salmons, from the day of St. Michael, till the day of the Purification of Our Lady, and in none other time of the year, because that salmons be seasonable in the said waters by the time aforesaid: and that in the parts where such rivers be, good and sufficient conservators of the said statute, made the said thirteenth year, should be assigned and sworn, as it was ordained in the statute of Westminster, and that they should punish the offenders upon the pain contained in the same statute of Westminster, without

A. D. 1293.

St. 13 R. 2.

St. 1. c. 19.

Stalkers nor  
 other nets  
 shall be used  
 to destroy  
 the frie or  
 breed of fish.

A D. 1303. shewing any favour thereof: which statutes have not been hitherto duly executed for default of good conservators, as our said lord the king hath perceived by complaint to him made in this present parliament: wherefore it is accorded and assented, that the justices of the peace of all the counties of England, shall be conservators of the said statutes in the counties where they be justices: and that they and every of them at all times, when they may attend, shall survey the offences and defaults attempted against the statutes aforesaid. And also shall survey and search all the weirs in such rivers, that they shall not be very strait for the destruction of such fry and brood, but of reasonable wideness, after the old assise used or accustomed: and that the same justices, or any of them which shall find default or abuse against the statutes aforesaid, shall make due punishment of them which be found in default, after the contents of the same statute. And that the same justices shall put good and sufficient under-conservators of the same statutes under them, which shall be sworn to make like surveying, search, and punishment, without any favour thereof to be shewed. And moreover that the same justices, in their sessions, shall enquire as well by their office, as at the information of the under-conservators aforesaid, of all trespasses, misprisions, and defaults made against any of the points aforesaid, and shall cause them which be thereof indicted to come before them; and if they be thereof convict, they shall have imprisonment, and make fine after the discretion of the same justices. And if the same be at the information of any of the under-conservators aforesaid, the same under-conservator shall have half of the same fine. And forasmuch as it is granted to the citizens of London by the king's progenitors, that they may remove and take away all the weirs in the waters of Thamis and Medeway, and that they shall have the punishments thereof pertaining to the king:

The justices of peace shall be conservators of the statutes of  
13 Ed. 1. c. 47.  
and 13 R. 2. c. 19.

Under-conservators appointed by the justices.

The mayor of London shall have the conservation of the statute in the Thamis.

our said lord the king, in this present parliament, by A. D. 1393.  
 the assent aforesaid hath granted, that the mayor or  
 warden of London for the time being shall have the con-  
 servation of the statutes aforesaid : and shall make there-  
 of due execution, and like punishment, as afore is or-  
 dained of the justices of the peace, in the said waters of  
 Thamys, from the bridge of Staines to London, and from  
 thence over the same water, and in the said water of  
 Medeway, as far as it is granted to the said citizens, as  
 afore is said.

2 HEN. 6. C. 15. ANNO DOM. 1423.

A. D. 1423.

NO MAN SHALL FASTEN NETS TO ANY THING OVER  
 RIVERS.

Item, It is ordained, that the standing of nets and en-  
 gines, called trinks, and all other nets which be and were  
 wont to be fastened and hanged continually day and  
 night by a certain time in the year, to great posts, boats,  
 and ancrs overthwart the river of Thames, and other  
 rivers of the realm, which standing is a cause of as great  
 and more destruction of the brood and fry of fish, and  
 disturbance of the common passage of vessels, as be the  
 wears, kydels, or any other engines, be wholly defended  
 for ever. And that every person that setteth or fastneth  
 them hereafter to such posts, boats, and ancrs, or like  
 thing, continually to stand as before is said, and be duly  
 thereof by the course of the law convict, shall forfeit to  
 the king 100 shillings at every time that he is so proved  
 in default. Provided always, that it shall be lawful to  
 the possessors of the said trinks, if they be of assise, to  
 fish with them in all seasonable times, drawing and pul-  
 ling them by hand as other fishers do with other nets, and  
 not fastning or tacking the said nets to posts, boats, and  
 ancrs, continually to stand as afore is said. Saving

The penalty  
 of those  
 which do  
 fasten trinks  
 or other nets  
 over any  
 river.

In what sort  
 owners of  
 trinks may  
 fish with  
 them.



A. D. 1423. always to every of the king's liege people their right, title, and inheritance in their fishings in the said water.

A. D. 1482.

22 EDW. 4. C. 6. ANNO DOM. 1482. *Rf*

AN ACT FOR SWANS.

How much  
land he must  
have which  
shall have a  
mark or  
game of  
swans.

Item, Where aswell our said sovereign lord the king, as other lords, knights, esquires, and other noble men of this noble realm of England, have been heretofore greatly stored of marks and games of swans in divers parts of this realm of England, until of late that divers keepers of swans have bought and made to them marks and games in the fens and marshes, and other places, and under colour of the same, and of surveying and search for swans and cygnets for their lords and masters, have stolen cygnets, and put upon them their own mark, by which unlawful means the substance of the swans be in the hands and possession of yeomen and husbandmen, and other persons of little reputation: wherefore it is ordained, established, and enacted by our said sovereign lord the king, with the assent of the lords spiritual and temporal, and at the special petition and request of the commons in the said parliament assembled, and by authority of the said parliament, that no person, of what estate, degree, or condition he be (other than the son of our sovereign lord the king) from the Feast of St. Michael next coming, shall have or possess any such mark or game of his own, or any other to his use shall have or possess any such mark or game, except he have lands and tenements of the estate of freehold to the yearly value of five marks above all yearly charges. And moreover, that every person or persons, now having any such mark or game, shall sell or give the same betwixt this and the Feast of St. Michael next coming, to the use of them to whom they shall be so sold or given: and

if it happen that any person or persons, not having any A. D. 1482.  
 possession of lands or tenements to the said yearly  
 value, shall have or possess any such mark or game after Any person  
 having five  
 marks of  
 freehold may  
 seise the  
 swans for-  
 teited.  
 the said feast, or any other person to the use of them or  
 any of them, then it shall be lawful to any of the king's  
 subjects, having lands or tenements to the said value,  
 to seise the said swans as forfeit; whereof the king  
 shall have one half, and he that shall so seise, the other  
 half.

## 22 EDW. 4. c. 7.

AN ACT FOR INCLOSING OF WOODS IN FORESTS,  
CHASES, AND PURLIEUS.

“ Item, Our said lord the king, considering that divers 4 Inst. 304.  
 “ subjects having woods growing in their own ground  
 “ within the forest of Rockingham, and other forests and  
 “ chases within his realm of England, or purlews of the  
 “ same, which have cut their said wood, because the  
 “ same subjects might not before time cut nor inclose  
 “ their said ground, to save the young spring of their  
 “ wood so cut, any longer time than for three years, the  
 “ same young spring hath been in times past, and daily  
 “ is destroyed with beasts and cattle of the same forest,  
 “ chases, and purlews, to the great hindrance, as well of  
 “ his said subjects, as of his deer, vert, and venison in  
 “ their covert, and otherwise likely to be the destruction  
 “ of the same forests, chases, and purlews;” “ by the 8 Co. 137.  
 1 Roll. 92.  
 “ assent of the lords spiritual and temporal, and the  
 “ commons, in the said parliament assembled, and by 194.  
 Woods felled  
 in any forest  
 or purlew  
 may be in-  
 closed and  
 kept seven  
 years.  
 “ the authority of the same, doth ordain, establish, and  
 “ enact, that if any of his subjects, having woods of his  
 “ own growing in his own ground, within any forest,  
 “ chase, or purlew of the same, within this realm of Eng-  
 “ land, from the first day of this parliament, shall cut, Enforced by  
 35 H. 8. c. 17.  
 “ or cause to be cut the same wood, or part thereof, by which is

A. D. 1482. *altered by 13 El. c. 25.* licence of the king, or of his heirs, in his forests, chases, or purlews, or without licence in the forest, chase, or purlew of any other person, or make any sale of the same wood; it shall be lawful to the same subjects, owners of the same ground whereupon the wood so cut did grow, and to other such persons to whom such wood shall happen to be sold, immediately after the wood so cut, to cope and inclose the same ground with sufficient hedges, able to keep out all manner of beasts and cattle forth of the same ground, for the preserving of their young spring; and the same hedges so made, the said subjects may keep them continually by the space of seven years next after the same inclosing, and repair and sustain the same as often as shall need within the same seven years, without suing of any other licence of him, or of his heirs, or other persons, or any of their officers of the same forest, chases, and purlews.'

A. D. 1485.

1 HEN. 7. CHAP. 7. ANNO DOM. 1485.

AN ACT SHEWING THE PENALTY FOR HUNTING IN THE NIGHT, OR WITH DISGUIISING.

2 Roll. 120. *133.* *3 Inst. 75.* *Co. Lit. 370.* 'Item, Forasmuch as before this time divers ordinances and statutes have been made in divers parliaments holden in the same realm, for the punishment of inordinate and unlawful huntings in forests, parks, and in warrens within the said realm, which statutes and ordinances notwithstanding, divers persons in great number, some with painted faces, some with visors, and otherwise disguised, to the intent they should not be known, riotously, and in manner of war arrayed, have oftentimes of late hunted, as well by night as by day, in divers forests, parks, and warrens in divers places of this realm, and in special in the counties of Kent, Surry, and Sussex, by colour whereof have en-

' sued in times past great and heinous rebellions, insur- A. D. 1485.  
 ' rections, riots, robberies, murders, and other incon-  
 ' veniencies, to the provocation and ensample of riotous  
 ' and evil-disposed persons of this realm in so offending,  
 ' which offences could not be punished before this time  
 ' according to the said statutes, ordinances, and laws of  
 ' this said realm, because that the said mis-doers, by  
 ' reason of their painted faces, visors, and other disguis-  
 ' ings could not be known : ' the king our sovereign  
 lord, of his noble and abundant grace, considering the  
 premisses, by the advice and assent of the lords spiritual  
 and temporal, and commons, in the said parliament as-  
 sembled, and by authority of the same, ordaineth, that  
 at every such time as information shall be made of any  
 such unlawful huntings by night, or with painted faces,  
 hereafter to be done, to any of the king's counsel, or to  
 any of the justices of the king's peace of the county  
 where any such hunting shall be had, of any person to  
 be suspect thereof, that then it shall be lawful to any of  
 the same counsel, or justices of peace, to whom any  
 such information shall be made, to make a warrant to  
 the sheriff of such county, or to any constable, bailiff, or  
 other officer within the same county, to take and arrest  
 the same person or persons of whom any such informa-  
 tion shall be made, and to have him or them afore the  
 maker of any such warrant, or any other the king's said  
 counsel, or justice of his peace of the same county ; and  
 that the said counsellor, or justice of peace, afore whom  
 such person or persons shall be brought, by his discre-  
 tion, have power to examine him or them so brought  
 afore the said counsellor or justice, of the said hunting,  
 and of the said doers in that behalf ; and if the same  
 person wilfully conceal the said huntings, or any person  
 with him defective therein, that then the same conceal-  
 ment be against every such person so concealing, felony,  
 and the same felony to be inquired of and determined, as

Penalties for  
 hunting in  
 the night, or  
 with dis-  
 guises, and  
 to deny it  
 being ex-  
 amined.  
 3 Ed. 1. c. 20.  
 21 Ed. 1.  
 st. 2.

Penalty if  
 the offender  
 conceal the  
 truth.



A. D. 1485. other felonies within this realm have used to be; and if he then confess the truth, and all that he shall be examined of, and knoweth in that behalf, that then the said offences of huntings by him done, be against the king our sovereign lord, but trespass finable, by reason of the same confession, at the next general sessions of the peace, to be holden in the same county by the king's justices of the same sessions, there to be cessed. And if any rescous or disobedysance be made to any person having authority to do execution or justice by any such warrant, by any person the which so should be arrested, so that the execution of the same warrant thereby be not had, that then the same rescous and disobedysance be felony, enquirable and determinable as is aforesaid. And over this it is enacted and established by the said authority, that if any person or persons hereafter be convicted of any such huntings, with painted faces, visors, or otherwise disguised, to the intent they should not be known, or of unlawful hunting in time of night, that then the same person or persons so convict to have like punishment, as he or they should have, if he or they were convict of felony.

Rescous of an  
offender  
felony.

Hunting dis-  
guised, or in  
the night, is  
felony.  
9 H. 3. stat. 2.  
c. 10.  
9 Geo. 1.  
c. 22.

A. D. 1491.

11 HEN. 7. CHAP. 17. ANNO DOM. 1491. *2p.*

THE FORFEITURE FOR TAKING OF FESANTS OR  
PARTRIDGES, OR THE EGGS OF HAWKS OR  
SWANS.

XVII. Item, Forasmuch as divers persons, having little substance to live upon, use many times as well by nets, snares, or other engines, to take and destroy fesants and partridges, upon the lordships, manors, lands, and tenements of divers owners and possessioners of the same, without licence, consent, or agreement of the same owners or possessioners, by the which the same owners and pos-

13 Ric. 2.  
St. 1. c. 13.

sessioners leese not only their pleasure and disport that A. D. 1494.  
 they their friends and servants should have about hawk-  
 ing hunting, and taking of the same, but also they leese  
 the profit and avail that by that occasion should grow to  
 their household, to the great hurt of all lords and gentle-  
 men, and other having any great livelyhood within this  
 realm. Wherefore it is ordained and enacted by the *Rast. pla. f.*  
 authority of this present parliament, that it shall not be *599. The*  
 lawful to any person, of what condition he be, to take or *penalty for*  
 cause to be taken any fesants or partridges, by nets, *taking of*  
 snares, or other engines, out of his own warren, upon the *fesants or*  
 freehold of any other person, without the assent, agree- *partridges in*  
 ment, and special licence of the owner or possessor of *another's*  
 the same, upon pain of forfeiture of ten pounds, the one *ground by*  
 half thereof to the party that will sue for the same by *nets, &c.*  
 action of debt, or by bill or otherwise, and the other half  
 thereof to the owner or possessor of the said ground,  
 upon the which the said fesants and partridges be so taken.  
 Also it is ordained by the said authority, that no manner *The penalty*  
 of person, of what condition or degree he be, take or *for taking of*  
 cause to be taken, be it upon his own ground or any other *hawks or*  
 man's, the eggs of any fawlkon, goshawks, laners, or *swans eggs*  
 swans, out of the nest, upon pain of imprisonment of a *out of their*  
 year and a day, and fine at the king's will, the one half *nests.*  
 thereof to the king, and the other half to the owner of *31 Hen. 8.*  
 the ground where the eggs were so taken: and that the *c. 12.*  
 justices of the peace have authority by this present act  
 to hear and determine such matter, as well by inquisi-  
 tion as information and proofs. Also it is ordained by  
 the said authority, that no man from the Feast of Pasche *Certain En-*  
 next coming, bear any hawk of the breed of England *glish hawks*  
 called a nyesse, goshawk, tassel, laner, laneret, or *prohibited to*  
 fawlkon, upon pain of forfeiture of his hawk to the *be borne.*  
 king, and the said hawk to be at the king's pleasure.  
 And that all such persons that bring any nyesse hawk or *He that*  
 hawks, from any the parts beyond the sea, bring a cer- *bringeth a*

A. D. 1494. tificate under the customer's seal of the port where he  
 nyesse hawk first landed with the said hawk or hawks; or if he  
 from foreign parts shall come out of Scotland, then under the seal of the warden or  
 bring a certi- his lieutenant of that march that he cometh through, tes-  
 tificate. tifying that the same hawk or hawks be of the parts be-  
 yond the sea, or of Scotland, upon the same pain. And  
 that the person that bringeth any such hawk or hawks  
 to the king, shall have a reasonable reward of the king,  
 or else the same hawk or hawks for their labour. Also  
 it is ordained by the same authority, that no man take  
 any ayrrer, fawikon, goshawk, tassel, or laner, or lanerets,  
 in their warren or woods, or in other place, nor pur-  
 posely drive them out of their coverts accustomed to  
 breed in, to cause them to go to other coverts to breed,  
 nor slay them for any hurt by them done, but suffer them  
 to pass at their liberties, upon pain of ten pounds the  
 one half thereof to the party that will sue for the same  
 by action of debt, by examination before the justice of  
 the peace, information or otherwise, and the other  
 half to the king. Provided alway, that the moiety  
 of the forfeiture abovesaid, given to the owner of  
 the ground for taking of swans eggs, be unto the  
 owner of the said swans, and not to the owner of the  
 ground.

The penalty  
 for taking,  
 killing, or  
 driving of  
 hawks.

1 *Edw. 6.*  
*c. 12.* which  
 repeals 31  
*Hen. 8. c. 12.*  
 and see 3 and  
 4 *Edw. 6.*

*c. 17.* which revives the same for three years; and see 7 *Ed. 6. c. 11.* which  
 continues it; and 1 *Mary St. 1. c. 1.* which repeals all offences made felony  
 since 1 *Hen. 8.* and 1 *Jac. 1. c. 27.*—4 and 5 *W. and M. c. 23.*—5 *Ann. c. 14.*—  
 9 *Ann. c. 25.*—3 *Geo. 1. c. 11.*—8 *Geo. 1. c. 19.*—10 *Geo. 2. c. 32.* and 28 *Geo.*  
*3. c. 12.*

A. D. 1503.

19 HEN. 7. C. 11. ANNO DOM. 1503. *Rep*  
 FOR DEER HAYES AND BUCKSTALLS.

13 R. 2. Stat.  
 1. c. 13.  
 11 Hen. 7.  
 c. 17.

Forasmuch as it is well understood and known,  
 that the greatest destruction red deer and fallow within  
 this realm in time past hath been and yet is with nete  
 called deerhayes, and buckstalls, and stalking with  
 beasts, to the great displeasure of our sovereign lord the



king, and of all the lords and other noblemen within this his realm, having forests, chases, or parks in their possession, rule or keeping, so that if the said nets or stalking should unlawfully be used and occupied in any time coming, as they have been in time past, the most part of the forests, chases, and parks of this realm should be therewith destroyed: be it therefore established and enacted by the lords spiritual and temporal, and the commons in this present parliament assembled, and by authority of the same, that any person or persons, spiritual or temporal, having no park, chase, nor forest of their own, keep nor cause to be kept any nets called deerhayes, or buckstalls, by the space of a month next after the proclamation of this act made, upon pain of forfeiture for every month that he or they so keep or cause to be kept the same nets, hayes, or buckstalls, ten pounds. And that no person from henceforth stalk, nor cause any other person to stalk with any bush or beasts to any deer, being in any park, chase, forest or without, but if it be within his own ground, chase, forest, or park, without licence of the owner, master of the game, or keeper of the same ground, chase, forest, or park, upon pain of forfeiture for every time that he or they so stalketh, ten pounds. And furthermore, that no person ne persons without his own ground slay, take, or cause to be taken by mean of craft or engine, any herons, without it be with hawking, or with long bow, upon pain of forfeiture for every heron taken or slain six shillings and eight pence; and that no person or persons, without his or their own ground, take any young herons out of the nest without license of the owner of the ground where the said nest is, upon pain of forfeiture for every heron so taken out of the nest ten shillings; and that every man that will, may and shall be admitted to sue for any of the said forfeitures by action of debt, and like process to be had and made therein, as in other actions of debt at

A. D. 1503.

The penalty  
for keeping  
of deer-hayes  
or buckstalls.

The penalty  
for stalking  
or causing  
another to  
stalk at a  
deer without  
licence.

The penalty  
for taking of -  
young herons  
out of the  
nest.



A. D. 1503 the making of this act, and that the defendant be not admitted to tend nor to do his law in any such action, nor any essoin nor protection to be allowed for the defendant in the same; and that two justices of peace in their sessions shall have authority to call before them any person suspected of the premisses, and their discretion to examine them in the premisses. And if by their examination the party so examined be found in default contrary to the premisses, then that person so found in default to be committed to prison, till he have found surety for payment for the same forfeitures to the king. And that those justices that so examine them, shall have the tenth part of every such forfeiture for their labour in that behalf.

Two justices of peace may examine any persons suspected, and punish them. See further 14 and 15 Hen. 8. c. 19. — 25 Hen. 8. c. 11. — 1 Jac. 1. c. 27. — 22 and 23 Car. 2. c. 25. — 4 and 5 W. and M. c. 2. — 5 Ann. c. 14. — 9 Ann. c. 25. — 3 Geo. 1. c. 11. — 6 Geo. 1. c. 19. and 28 Geo. 2. c. 12.

A. D. 1523. 14 AND 15 HEN. VIII. CHAP. 10. ANNO DOM. 1523. 2

THE PENALTY FOR UNLAWFULLY HUNTING THE HARE.

13 R. 2. st. 1. Forasmuch as our sovereign lord the king, and other noblemen of this realm of England, before this time having used and exercised the game of hunting of the hare, for their disport and pleasure, which game is now decayed, and almost utterly destroyed, for that divers persons in divers parts of this realm, by reason of the tracing in snow, have killed and destroyed, and daily do kill and destroy the same hares, by ten, twelve, or sixteen upon one day, to the displeasure of our said sovereign lord the king, and other noblemen of this his realm: Wherefore be it enacted by our said sovereign lord, by the lords spiritual and temporal, and by the commons, in this present parliament assembled, and by authority of the same, That no person or persons of what estate, degree, or condition, they be, from henceforth trace, destroy, and kill any hare in the snow with any dog, bitch, bow, nor otherwise. And that the justices

The penalty for killing a hare in the snow.

of the peace within every shire, at every sessions of the peace, and stewards of leets, shall have full authority and power to inquire of such offenders. And after such inquisitions found, the said justices of the peace, and stewards of leets, for every hare so killed, shall cess upon every such offender six shillings and eight-pence, to be forfeited to our said sovereign lord, that shall be so founden by the justices of peace in their sessions, and the forfeiture found in every leet to be to the lord of the leet. *St. 1 Jac. c. 27.*

A. D. 1503.  
Justices of peace and stewards in leets, may inquire of and punish the offenders.  
See further, 22 and 23 *Car. 2. c. 25.*  
4 and 5 *W. & M. c. 23.*  
5 *Anne, c. 14.*  
9 *Anne c. 25.*  
3 *Geo. 1. c. 11.*  
8 *Geo. 1. c. 19. & 23 Geo. 2. c. 12.*

25 HEN. 8. C. 11. A. D. 1533. *Rep*

A. D. 1533.

TO AVOID DESTROYING OF WILD-FOWL.

Where before this time there hath been within this realm great plenty of wild-fowl, as ducks, mallards, wigeons, teals, wild-geese, and divers other kinds of wild-fowl, whereby not only the king's most honourable household, and all the houses of the noblemen and prelates of this realm, have been furnished for the necessary expences of the same houses at convenient prices, but also all the markets of the same realm were sufficiently furnished with wild-fowl, there to be sold in such wise, that such as were meet to make provision of the same for their houses, might at reasonable prices, at the same markets, be thereof provided: Nevertheless, divers persons next inhabiting in the countries and places within this realm, where the substance of the same wild-fowl have been accustomed to breed, have in the summer season, at such time as the old fowl be moulted, and not replenished with feathers to fly, nor the young fowl fully feathered perfectly to fly, have by certain nets and other engines and policies yearly taken great number of the same fowl, in such wise, that the brood of wild-fowl is

The cause of the decay of wild-fowl.

A. D. 1532. almost thereby wasted and consumed, and daily is like more and more to waste and consume, if remedy be not therefore provided.

Wild-fowl shall not be taken between the last day of May and the last day of August.

*Rep. 3 and 4  
Ela. 6. c. 7.  
Rec. 21 Jac.  
1. c. 28. continued by 3  
Car. 1. c. 4.  
& 16 Car. 1.  
c. 4.*

S. II. Be it therefore enacted by the king our sovereign lord, by the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That it shall not be lawful to any person or persons hereafter, between the last day of May, and the last day of August, to take, or cause to be taken any such wild-fowl, with nets or any other engines, upon pain of one year's imprisonment, and to forfeit for every fowl so taken four pence, the one half thereof to be to the king our sovereign lord, and the other half to him that will sue for the same, by action of debt in any of the king's courts, and in the which action none essoign, nor protection shall be allowed, nor wager of law received.

Justices of peace may inquire of, hear, and determine these offences.

S. III. And be it enacted by the authority aforesaid, That all justices of peace, within the limits of their commission, shall have power and authority to inquire, hear, and determine the offences aforesaid, like as they commonly use and do in cases of trespass.

Killing of wild-fowl with spaniels by gentlemen, and freeholders of 10s.

S. IV. Provided always, That it shall be lawful to any gentleman, or any other that may dispend forty shillings by the year, of freehold, to hunt and take such wild-fowl with their spaniels only, without using any net or other engines for the same, except it be a long-bow or long-bows.

No person shall destroy or take away the eggs of any wild-fowl.

*10 Geo. 2.  
c. 32. § 10.  
And see further  
ther. 1 Jac. 1.  
c. 27. 4 & 5  
H. & H. c. 22.*

S. V. Provided always, and be it enacted by the same authority, That from the first day of March, which shall be in the year of our Lord God, 1534, unto the last day of June then next ensuing, and so yearly from thenceforth, no manner of person or persons shall presume by day or by night, willingly to withdraw, purloin, take, destroy, or convey, any manner of eggs of any kind of wild-fowl, from or in any nest, place or places, where



they shall chance to be laid by any kind of the same A. D. 1538.  
 wild-fowl, upon pain of imprisonment for one year, and <sup>5 Anne, c. 14.</sup>  
 to lose and forfeit for every egg of any crane or bustard, <sup>9 Anne, c. 25.</sup>  
 so destroyed, purloined, withdrawn, conveyed, or taken <sup>3 Geo. 1. c. 11.</sup>  
 from any nest or place, twenty pence, and for every egg <sup>8 Geo. 1. c. 19.</sup>  
 of every bittour, heron, or shoveland, eight pence, and <sup>and 28 Geo. 2.</sup>  
 for every egg of every mallard, teal, or other wild-fowl,  
 one penny. The one moiety thereof to be to the king  
 our sovereign lord, and the other half to him that will  
 sue for the same, in form aforesaid, wherein no wager of  
 law, essoin, or protection, shall be allowed. And that  
 all justices of peace, within the limits of their commis-  
 sion, shall have full power and authority to enquire,  
 hear, and determine the same in form before rehearsed.

S. VI. Provided always, That this act extend not nor <sup>Destroying</sup>  
 be hurtful at any time hereafter to any person or persons <sup>of crows,</sup>  
 that will destroy any crows, choughs, ravens, and bus- <sup>choughs, &c.</sup>  
 sards, or their eggs, or to any other fowl or their eggs, <sup>excepted.</sup>  
 not comestible, nor used to be eaten.

31 HEN. 8. C. 2. A. D. 1539.

A. D. 1539.

AN ACT THAT FISHING IN ANY SEVERAL POND, OR  
 MOTE, WITH AN INTENT TO STEAL FISH OUT OF  
 THE SAME, IS FELONY.

‘ Whereas divers and many of the lords, knights,  
 ‘ esquires, gentlemen, and other the king’s subjects  
 ‘ within this his realm, at their great costs and charges  
 ‘ have caused to be made within their several grounds,  
 ‘ many ponds, stews, and motes, and stored them with  
 ‘ divers kinds of fishes, as pikes, bremes, carps, tenches,  
 ‘ and other fishes, whereof they have thought to have  
 ‘ had great commodity, as well for the pleasure of their  
 ‘ friends, as for their own commodity and profit towards  
 ‘ the necessary finding of their houses, divers and many



A. D. 1539. ‘ light and unreasonable persons of this realm, being of  
 ‘ no good rule nor honesty, little or nothing regarding  
 ‘ God, the fear of their sovereign lord the king’s high-  
 ‘ ness, nor his laws, have not only fished the said ponds,  
 ‘ stews and motes, as well by night as by day, with nets,  
 ‘ hooks, and baits of divers sorts, but also with great  
 ‘ number of misruled persons have entered into such  
 ‘ grounds, and there with great violence have broken up  
 ‘ the heads of the same ponds, stews, and motes, and  
 ‘ destroyed and taken the fish of the said ponds, stews,  
 ‘ and motes, to the great displeasures and losses of the  
 ‘ owners of the said ponds, stews, and motes, and  
 ‘ contrary to all good reason, right, and conscience.’—

All fishing  
 with nets,  
 &c. with in-  
 tent to steal  
 fish in the  
 night, or  
 breaking the  
 head of a  
 pond to take  
 fish, shall be  
 felony.

This section  
 repealed by

1 Ed. 6. c. 12.

1 M. s. 1. c. 1.

Wherefore, be it enacted by the king our sovereign  
 lord, with the assent of the lords spiritual and temporal,  
 and the commons, in this present parliament assembled,  
 and by the authority of the same, That as well all man-  
 ner of fishings with any nets, hooks, or baits, of what  
 kind soever they be, in any several pond, stew, or mote,  
 with an intent to steal fish out of the same, done or com-  
 mitted at any time after the Feast of the Nativity of St.  
 John Baptist next coming, that is to say, in the thirty-first  
 year of the reign of oursaid sovereign lord, from the hour  
 of six in the even-tide, unto the hour of six in the morn-  
 ing, against the wills and minds of the owners or pos-  
 sessioners of such ponds, stews, or motes, as also the un-  
 lawful breaking-up of the head of any several pond,  
 stew, or mote, by day or by night, after the said feast,  
 without colour of title so to do, whereby any fish of the  
 same pond, stew, or mote, is taken or destroyed, against  
 the will or mind of the owner or possessioner of the  
 same, be to all intents deemed, taken, and adjudged  
 felony; and that those persons so offending shall  
 have and suffer all such pains of death and punish-  
 ments, as other felons ought to have and suffer for felony  
 by the course of the laws of this realm.

II. And also be it further enacted by the authority A. D. 1539.  
 aforesaid, That if any such evil-disposed persons, after <sup>Punishment</sup>  
 the feast before limited, do fish in the day-time, at any <sup>of persons</sup>  
 other time than is before rehearsed, in any such several <sup>fishing in</sup>  
 ponds, stews, or motes, with any manner of nets, hooks,  
 or baits, as is aforesaid, what kind soever they be of,  
 against the will, pleasure and mind of the owners or  
 possessors of the same several ponds, stews, or motes,  
 not having any manner of colour of title so to do, and  
 thereof be lawfully convict at the suit of our sovereign  
 lord the king, or the party grieved, that then the said  
 parties so convicted shall suffer imprisonment by the  
 space of three months, and after the said three months  
 expired, shall find sufficient surety for his or their good  
 abiding, or else to remain still in prison without bail or  
 mainprise, unto such time he or they can find such  
 surety.

31 HEN. VIII. CAP. XII. A. D. 1539.

It shall be felony to take in the king's ground any <sup>Rep. 1 Ed. 6.</sup>  
 egg or bird of any falcon, goshawk, or laner, out of the <sup>c. 12.</sup>  
 nest ; or to find or take up any falcon, jerrfalcon, jerkin, <sup>1 M. s. 1. c. 1.</sup>  
 sacer or sacerit, goshawk, laner or lanerite, of the king's, <sup>Revived by</sup>  
 and having on it the king's arms and verviles, and do <sup>3 & 4 Ed. 6.</sup>  
 not within twelve days bring or send the same to the <sup>c. 17.</sup>  
 master of the king's hawks, or to one of his falconers, or <sup>and conti-</sup>  
 to the chief of the shire ; or between the rising of the <sup>nued by</sup>  
 sun and setting of the same, with his face hid or covered <sup>7 Ed. 6. c. 11.</sup>  
 with hood, or visert, or painted, or disguised, to the in-  
 tent he would not be known, to enter into any forest,  
 chase or park of the King's, Queen's, Prince's, or any of  
 the king's children, or into any other ground of either of  
 theirs inclosed with wall or pale, ordained for the keep-  
 ing of deer, to the intent to steal any of them, or to drive  
 any of them forth of the same forest, &c. or in or at any

A. D. 1539. time of the day, with his face hid or disguised, to kill any conies, or rabbits, within any ground, being the lawful warren of the king's, &c. in or within any of his or their parks; or in the night to enter into any park, chase, or forest of the king's, &c. to the intent to steal any deer, or into his or their warren to kill and steal any conies.

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A. D. 1540.

32 HEN. 8. CAP. VIII. A. D. 1540.

Rep.

1 Jac. 1. c. 27.

Whosoever shall sell or buy any pheasant or partridge, (saving the officers of the king's, queen's or prince's houses) shall forfeit for every pheasant six shillings and eight pence, and for every partridge three shillings and four pence to the king, &c.

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32 HEN. 8. CAP. 11. A. D. 1540.

Rep 1 Ed. 6.  
c. 12.

1 M. sess. 1.  
c. 1.

11 Hen. 7. c.  
17.

3 & 4 Ed. 6.  
c. 17.

7 Ed. 6. c. 11.

It shall be felony to take, or cause to be taken, the egg or eggs of any falcon, goshawk, or lardard, or their birds, out of their nests; or with vizards or painted faces, or otherwise disguised, to the intent he would not be known, to steal deer or conies in the day-time in a lawful warren or park; or to steal deer or conies in the night there.

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32 HEN. 8. C. 35. A. D. 1540.

#### THE JUSTICES OF FORESTS TO MAKE DEPUTIES.

Every justice of the king's forests, chases, and parks may make as many deputies as he will.

Forasmuch as it is much doubted whether the king's justices of his forests, parks, and chases within this realm, may lawfully make or depute any deputy or deputies, for the exercising of their said roomes or office of justice of the forests: for the avoiding of which ambiguity and doubt, and to the intent that the laws of

the forest may be more truly and speedily executed, it A. D. 1540.  
 may be enacted by the king our sovereign lord, by the  
 assent of the lords spiritual and temporal, and the com-  
 mons, in this present parliament assembled, and by au-  
 thority of the same, That from henceforth all and every  
 the justice and justices of the king's forests, parks, and  
 chases within this realm, which now be, or hereafter  
 shall be, by their writing, sealed with the seal of their  
 office, shall make, assign, depute, and appoint, as many  
 deputy or deputies for the exercising of the same office  
 of justice or justices of the forest, as to such justice or  
 justices from time to time shall be thought convenient;  
 which deputy and deputies so appointed, shall have like  
 power and authority to do and execute all things con-  
 cerning the king's forests, parks, and chases, and all  
 other things concerning the office and offices of the jus-  
 tice of the forests, to all intents and purposes, and in as  
 large and ample manner and form, as the same justice or  
 justices might or may lawfully do or execute by the  
 laws of this realm, and as though the same justice or  
 justices were there personally present in his or their own  
 person or persons.

33 HEN. 8. CAP. 2. A. D. 1541.

A. D. 1541.

Whosoever shall buy any fresh fish (except sturgeon, *Exp.*  
 porpose and seal) of any stranger in the parts of Flan-<sup>23 E/l. c. 7.</sup>  
 ders, Zealand, Picardy or France, or upon the sea be-<sup>27 E/l. c. 15.</sup>  
 tween shore and shore, or in any place beyond the sea,<sup>39 E/l. c. 10.</sup>  
 to put to sale to any person within this realm, shall for-  
 feit for every time ten pounds : but this shall not extend  
 to any persons which shall buy fish in any part of Ice-  
 land, Scotland, Orkney, Shetland, Ireland, or Newland.



A. D. 1541.

33 HEN. 8. c. 6. A. D. 1541. *24*

*Stat. 23 H. 8.* Where in the parliament holden at Westminster, the 15th day of January, in the five-and-twentieth year of the king's most gracious reign, and there continued and kept until the 30th day of March then next ensuing, among divers and sundry wholesome and laudable acts, statutes, and ordinances, one statute and ordinance was made and ordained for the avoiding and eschewing of shooting in cross-bows, and hand-guns: since the making of which act, divers malicious and evil-disposed persons, not only presuming wilfully and obstinately the violation and breach of the said act, but also of their malicious and evil-disposed minds and purposes, have wilfully and shamefully committed, perpetrated and done divers detestable and shameful murders, robberies, felonies, riots and routs, with cross-bows, little short hand-guns, and little hagbuts, to the great peril and continual fear and danger of the king's most loving subjects, and also divers keepers of forests, chases, and parks, as well of our said sovereign lord, as other his nobles and commons; and divers gentlemen, yeomen, and serving-men now of late have laid a part the good and laudable exercise of the long-bow, which always heretofore hath been the surety, safe-guard, and continual defence of this realm of England, and an inestimable dread and terror to the enemies of the same. And now of late the said evil-disposed persons have used, and yet do daily use to ride and go in the king's highways, and else-where, having with them cross-bows and little hand-guns, ready furnished with quarrels, gunpowder, fire and touch, to the great peril and fear of the king's most loving subjects. For reformation whereof, be it enacted, ordained, and established by the king our sovereign lord, the lords spiritual and temporal, and the commons in this present parliament assembled, and by

Inconveniences ensuing the use of cross-bows and hand-guns.

the authority of the same, in manner and form follow- A. D. 1541.  
 ing, that is to say, That no person or persons, of what <sup>Who may</sup>  
 estate or degree he or they be, except he or they in <sup>keep or shoot</sup>  
 their <sup>in a gun or</sup>  
 own right, or in the right of his or their wives, to his <sup>cross-bow,</sup>  
 or their own uses, or any other to the use of any such <sup>and who not.</sup>  
 person or persons, have lands, tenements, fees, annui- <sup>Stat. 2 & 3</sup>  
 ties, or offices, to the yearly value of one hundred pounds, <sup>E. 6. c. 14.</sup>  
 from or after the last day of June, next coming, shall  
 shoot in any cross-bow, hand-gun, hag-but, or demy-  
 hake, or use to keep in his or their houses, or elsewhere,  
 any cross-bow, hand-gun, hag-but, or demy-hake, other-  
 wise or in any other manner than is hereafter in this pre-  
 sent act declared, upon pain to forfeit, for every time that  
 he or they so offend contrary to this act, ten pounds.

S. II. And furthermore be it enacted by the authority <sup>Of what</sup>  
 aforesaid, That no person or persons, of what estate or <sup>length a</sup>  
 degree soever he or they be, from or after the said last day <sup>hand-gun,</sup>  
 of June, shall shoot in, carry, keep, use, or have in his <sup>hag-but, and</sup>  
 house; or elsewhere, any hand-gun, other than such <sup>demy-hake</sup>  
 as shall be in the stock and gun of the length of one whole <sup>shall be.</sup>  
 yard; or any hag-but or demy-hake, other than such  
 as shall be in the stock and gun of the length of three  
 quarters of one yard, upon pain to forfeit, for every  
 time that he or they shall shoot in, carry, use, or have  
 any such gun, being not of the length of one whole yard,  
 or hag-but, or demy-hake, being not of the length of three  
 quarters of a yard, ten pounds sterling. And that it may <sup>He that hath</sup>  
 be lawful to every person and persons which have lands, <sup>100l. by year,</sup>  
 tenements, fees, annuities, or offices, to the yearly value <sup>may take the</sup>  
 of one hundred pounds, as is aforesaid, to seize and take <sup>cross-bow or</sup>  
 every such cross-bow, and also every hand-gun being in <sup>gun from an</sup>  
 stock and gun shorter in length than one whole yard,  
 and every hag-but, and demy-hake being shorter in  
 length than three quarters of a yard, or any of them,  
 from the keeping or possessing of every such offender  
 contrary to the form of this act; and the same cross

A. D. 1511. how or cross-bows to keep and retain to his or their own use : and also the same hand-guns, hag-buts, and demy-hakes, so seized and taken, within twenty days next after the same seizure or taking, to break and destroy, upon pain of forty shillings for every gun so seized, and not broken and destroyed, and the same so broken and destroyed, to keep and retain to his or their own use.

No person shall carry a gun charged. S. III. And be it further enacted by the authority aforesaid, That no person or persons, other than such as have lands, tenements, rents, fees, annuities, or offices, to the yearly value of one hundred pounds, as is aforesaid, from or after the said last day of June, shall carry or have in his or their journey, going or riding in the king's highways, or elsewhere, any cross-bow bent, or gun charged or furnished with powder, fire, or touch for the same, except it be in time and service of war, upon pain to forfeit for every such offence ten pounds : this present act, or any thing therein contained to the contrary notwithstanding.

Shooting in a market-town with a gun. S. IV. And be it further enacted by the authority aforesaid, That no person or persons, from the said last day of June, shall in any wise shoot in or with any hand-gun, demy-hake, or hag-but, at any thing at large, within any city, borough, or market-town, nor within one quarter of a mile of any city, borough, or market-town, except it be at a butt or bank of earth, in place convenient, or for the defence of his person or house, upon pain to forfeit for every such shoot ten pounds, this present act, or any thing therein contained to the contrary notwithstanding.

For man shall command his servant to shoot. S. V. And be it further enacted by the authority aforesaid, That no person or persons, of what estate or degree soever he or they be, shall, from or after the last day of June, command any of his or their servants to shoot in any cross-bow, hand-gun, hag-but, or demy-hake, of



his or their said masters, or of any other persons, at any V. D. 1541.  
 deer, fowl, or other thing, except it be only at a butt or  
 bank of earth, or in the time of war, as is abovesaid,  
 upon pain to forfeit for every such offence ten pounds.  
 The one moiety of all which forfeitures and penalties in  
 this present act above specified, shall be to the king our  
 sovereign lord, his heirs and successors, and the other  
 moiety thereof to the party that will sue for the same by  
 bill, plaint, action of debt, or information, in any of the  
 king's courts of record, in which suit no essoin, protec-  
 tion, nor wager of law shall be allowed.

S. VI. Provided always, and be it enacted by the au-  
 thority aforesaid, That it shall be lawful from henceforth Shooting at a  
butt or bank  
of earth.  
 to all gentlemen, yeomen, and serving-men, of every lord  
 spiritual and temporal, and of all knights, esquires, and  
 gentlemen, and to all inhabitants of cities, boroughs, and  
 market-towns of this realm of England, to shoot with any  
 hand-gun, demy-hake, or hag-but, at any butt or bank  
 of earth, only in place convenient for the same, so that  
 every such hand-gun, demy-hake, and hag-but be of the  
 several lengths aforesaid, and not under. And that it Who may  
keep in their  
houses guns  
of a lawful  
length.  
 shall be lawful to every of the said lord and lords,  
 knights, esquires, and gentlemen, and the inhabitants of  
 every city, borough, and market-town, to have and  
 keep in every of their houses any such hand-gun or  
 hand-guns of the length of one whole yard, or any hag-  
 but, or demy-hake of the length of three quarters of a  
 yard, as is aforesaid, and not under, to the intent to use  
 and shoot in the same at a butt or bank of earth only, as  
 is abovesaid, whereby they and every of them, by the  
 exercise thereof in form abovesaid, may the better aid  
 and assist to the defence of this realm, when need shall  
 require; this present act, or any thing therein contained,  
 to the contrary notwithstanding.

S. VII. And be it further enacted by the authority He that  
dwelleth in a  
house stand-  
 aforesaid, That it shall be lawful to every person and per-



A. D. 1511. sons, which dwelleth and inhabiteth in any house standing, and being set distant two furlongs from any city, borough, or town, to keep and have in his said house, for the only defence of the same, hand-guns, hag-buts, and demy-hakes, being of the several lengths aforesaid, and not under, and to use and exercise to shoot in the same at any butt or bank of earth near to his house, and not otherwise; any thing contained in this act to the contrary notwithstanding.

Placards of licence to shoot in cross-bows, &c. void.

S. VIII. And furthermore the king's most loving subjects, the lords spiritual and temporal, and the commons in this present parliament assembled, most humbly do beseech the king's majesty, that it be further enacted by the authority aforesaid, That all letters, patents, fraternities, and also all other placards, licences, and bills assigned, heretofore had, made, or signed by his highness, or by any other authorized by his highness letters patent under his great seal, to give licence and placard to shoot in cross-bows and hand-guns, or any of them, shall be, from and after the said last day of June, frustrate, void, and of none effect.

All statutes for shooting in cross-bows and guns repealed.

S. IX. And also that it may be further enacted by authority aforesaid, That the said statute made in the said twenty-fifth year of the king's most gracious reign, and all other statutes heretofore made and provided for the avoiding and restraint of shooting in cross-bows and hand-guns, or for any of them, or for the using and keeping of the same, be from henceforth utterly void, and of none effect.

S. X. Provided always, That every process, suit, or information, conceived, commenced, and now depending, for any offence done contrary to the form of the said statute, made in the said five-and-twentieth year of the king's most noble reign, or of any other statute, made, provided for, and concerning the shooting in cross-bows and hand-guns, not repealed, and for the keeping of the

same, shall be as good and effectual to the parties that A. D. 1541. have commenced the same, and shall stand and be in such form, effect, degree, and condition, as if this act had never been made.

S. XI. Provided also, That this act, or any thing therein contained, be not in any wise hurtful or prejudicial to any person or persons, now being, or that hereafter shall be appointed by the king's highness to keep, receive, or take any cross-bows or hand-guns, that shall be forfeited or taken within the precinct or liberty of the king's forests, parks, or chases ; but that he or they may lawfully keep and retain the same cross-bows or hand-guns, from time to time, until such time as the further pleasure of the king's highness in that behalf, be to every such person hewed and declared.

S. XII. Provided also, That this act extend not to the makers of cross-bows or hand-guns, but that they may lawfully keep cross-bows and hand-guns, hag-buts, and demy-hakes in their houses, and shoot in the same, only for proving and assaying of them, at a butt or bank of earth, in a place convenient, and not otherwise ; so that the said hand-guns, hag-buts, and demy-hakes be of the several lengths in stock and gun, as is above limited.

S. XIII. Provided also, That this act, nor any thing therein contained, extend not, or be prejudicial to any merchants which have or shall have any cross-bows, hand-guns, hagbuts, and demy-hakes, or any of them, to sell within this realm, and to none other use ; so that the same hand-guns, hag-buts, and demy-hakes be of the several lengths in gun and stock, as is above limited, and not under.

S. XIV. Provided also, That no manner of person run in any danger, or take hurt by reason of any penalty or forfeiture contained in this act, until such time as proclamation be made of the act within the same county,

A. D. 1511. where the party that shall or may offend contrary to this act, dwelleth, by the space of twenty days next after the making of the said proclamation.

*One bringing  
cross-bow  
or hand-gun  
into another's  
house* S. XV. Provided also, That if any manner of person bring or cause to be brought with him into his lodging, or in or to any other man's house, any cross-bow or hand-gun, that then the penalty and forfeiture, if any such be, or hereafter shall be forfeited by reason of this act, to run and be only upon the bringer of the said cross-bow and hand-gun, and not to the owner of the same lodging or house, if the said owner of the said lodging or house cause the bringer thereof to take and to carry away the said cross-bow or hand-gun again with him at his departing; any thing in this act made to the contrary notwithstanding.

*Any party  
bringing the  
offender to a  
justice of  
peace.* S. XVI. And be it also enacted by the authority of this present parliament, That if any person or persons from or after the last day of June next coming, see or find any person or persons offending or doing contrary to the form and effect of this present act, that then it shall be lawful to every such person or persons, perceiving, finding, or seeing, any such person or persons so offending contrary to this act, to arrest and attach every such offender or offenders, and to bring or convey the same to the next justice of the peace of the same county, where the same offender or offenders shall be found so offending. And that the same justice of the peace, upon a due examination and proof thereof before him had or made, by his discretion, shall have full power and authority to send or commit the same offender or offenders to the next jail, there to remain till such time as the said penalty or forfeiture shall be truly contented and payed by the said offender: the one moiety of the same penalty to be paid to the king's highness, and the other moiety thereof to the first bringer or conveyor of the said offender to the same justice of peace.



S. XVII. And be it further enacted by the authority A. D. 1534.  
aforesaid, That if any person or persons do at any time <sup>In every placard granted</sup>  
hereafter obtain, get, or purchase, of the king's majesty, <sup>to shoot in</sup>  
his heirs, or successors, any placard, licence, or bill as- <sup>cross-bow,</sup>  
signed, to shoot in any cross-bow, hand-gun, hagbut, or <sup>he, there</sup>  
demy-hake, contrary to the tenor, purport, and effect of <sup>shall be con-</sup>  
this present act, that then there shall be contained in every <sup>tained at</sup>  
such placard, licence, and bill assigned, at what beasts, <sup>what beasts</sup>  
fowls or other things, the said person or persons so ob- <sup>or fowls he</sup>  
taining any such placard, licence, or bill assigned, shall <sup>shall shoot</sup>  
shoot at, with any cross-bow, hand-gun, hagbut, or demy-  
hake; or else that every such placard, licence, and  
bill assigned, hereafter to be obtained, gotten, or pur-  
chased, shall be clearly void, frustrate, and of none effect.  
And also that every such person or persons so obtain-  
ing any such placard, licence, or bill assigned, before  
they shoot in any such cross-bow, hand-gun, hagbut,  
or demy-hake, in any such manner or form, as shall be  
mentioned in any such placard, licence, or bill assigned,  
shall be bounden in the king's court of chancery, by re-  
cognisance, in the sum of twenty pounds, to the king's  
use, with and upon condition that he so obtaining or  
having the said licence, placard, or bill assigned, shall  
not shoot in any cross-bow, hand-gun, hagbut, or  
demy-hake, at any other beasts or fowls, than in any  
such placard, licence or bill assigned, shall be contained  
and specified; and also all such placards, licences, and  
bills assigned, so hereafter to be made to any person  
or persons, not being so bounden by recognisance in the  
court of the chancery, as is aforesaid, to be utterly void  
and of none effect.

S. XVIII. And be it further enacted by the authority <sup>who may en-</sup>  
aforesaid, That it shall be lawful to all justices of the peace <sup>quire of and</sup>  
in their sessions, and to all stewards and bailiffs in <sup>punish of-</sup>  
their <sup>tenders.</sup>  
several leets and lawdays, to enquire, hear, and determine  
every such offence, after the said last day of June, to be



A. D. 1541. committed and done contrary to the tenor of this present act ; so that always no less fine than ten pounds be assessed upon every such presentment and conviction made according to the due course of the law, the same fine so by the same justices of peace upon every such presentment and conviction made before them in their sessions, to be paid and levied only to the king's use ; and the one moiety of every fine to be assessed by the steward or bailiffs of any leet or lawday upon every presentment or conviction before them to be made to be paid and levied to the use of the king our sovereign lord ; and the other moiety, the one half to the owner of the said leet or lawday, by distress or action of debt, and the other half of the same second moiety of the same fine to be to the party that will pursue for the same in any of the king's courts by bill, plaint, information, or action of debt, in the which none essoin, protection, nor wager of law shall be allowed.

Who shall have the forfeitures, and by what means they shall receive them.

Wilful concealment of the jury shall be enquired of by another jury.

S. XIX. And be it further enacted, That if any jury, being sworn and charged to enquire for the king our sovereign lord, before any justices of the peace, or stewards of leets or lawdays, of any offences committed or done contrary to this present act, do wilfully conceal any of the same offences ; that then the said justices, stewards, or bailiffs, before whom any concealment shall be had and done, shall have authority, by virtue of this present act, from time to time, to charge and swear another jury of twelve or more good and substantial honest persons, to enquire of every such concealment : and if any such concealment be found and presented by the said jury, so charged to enquire of the same, that then every one of the said first jury that so did conceal the same, shall lose and forfeit for every such concealment of every such offence, twenty shillings. All which forfeitures and penalties of twenty shillings, for every such concealment

of every such offence, so found and presented before the same justices of peace, shall wholly be levied and paid to the king's use. And the moiety of all the same forfeitures and penalties of twenty shillings, so found and presented before the stewards or bailiffs of any leet or lawday, shall be levied and paid to the use of the owner of the said leet or lawday, by distress or action of debt; and the other moiety thereof to be to the party or parties that will sue for the same by action, information, bill, or plaint, in any of the king's courts, in the which actions, informations, bills, or plaints, no wager of law, essoin, nor protection shall be allowed. A. D. 1541.

XX. Provided alway, and be it enacted by the authority aforesaid, That if any person or persons hereafter in any part do offend or do contrary to the purview and remedy of this act, whereupon cause of action for the same offence shall be given to the king, his heirs or successors, or to any other person or persons that will sue by virtue of this act, for the punishment of the said offence or forfeits; that if the king our sovereign lord, his heirs or successors, within one year next and immediately after such offences and forfeitures had and made, do not pursue their action or actions so given by this act, or cause examination upon such defaults and offences to be had and made before their counsel, or other presentments thereof to be had, according to the meaning of the same act: and every other person which hereafter, by virtue of this act, may have action or actions, suit or information upon this statute, within half a year next and immediately after such offences or forfeits had and made, do not commence their suits, informations, actions, or presentments, of and upon the said forfeits, by action, or otherwise, as in this present act is limited and declared; that then as well the king our sovereign lord, his heirs and successors, after one year next after such offences and forfeits had and made, if no suit in his or

Within what time a suit shall be commenced against an offender, by the king, or any other.

XXI. 1541. their name be taken by action, or otherwise, as is before expressed, before the same year ended and determined, as every other person after half a year next after like offences and forfeits had and done in the form aforesaid, if no suit thereupon be taken by none of them in form above declared, be utterly excluded and debarred of their said suits, actions, informations and examinations, to them given by virtue of this said act; and the parties, and every of them, so offending, shall be of all such offences and forfeits clearly discharged and quit; any thing in this act comprized to the contrary notwithstanding.

Dwellers  
within 12  
miles of  
Scotland.  
*Rep. 4 J. 1.*  
The inhabi-  
tants of cer-  
tain places  
priviledged.

**XXI.** Provided always, and be it enacted by the authority aforesaid, That this present act, nor any thing therein contained, shall in any wise extend or be prejudicial unto the king's subjects resident or inhabiting near unto the coasts of the sea, in any part of this realm, their houses being not above five miles distant from the same coasts: nor also to any of the king's said subjects inhabiting within twelve miles of the borders of Scotland; nor to any the king's subjects inhabitants of the town and marches of Calice, nor to any of the inhabitants of the isles of Gersey, Gernesey, Anglesey, and the isles of Wight and Man; but that it shall be lawful for every of the said inhabitants, at all times hereafter, to have, exercise, and use their hand-guns, hagbuts, and demy-hakes, of the lengths abovesaid, within the limits and isles abovesaid, so that it be at no manner of deer, bearn, shoveld, fasant, partridge, wildswan, or wild elke, or any of them; this present act, or any thing therein contained, to the contrary notwithstanding.

A servant  
charging a  
gun by the  
command-  
ment of his  
master.

**XXII.** Provided also, That this act, nor any thing therein contained, be in any wise hurtful or prejudicial to any servant or person that hereafter, from the said last day of June, shall bend, bear, carry, charge, use or assay any cross-bow, or any hand-gun, demy-hake, or hagbut of



the lengths abovesaid, by the commandment of his lord A. D. 1541.  
 or master, so that the said servant or person do not shoot  
 at any fowl, deer, or other game, of what kind or nature  
 soever they be of: nor also to any such servant, person A servant  
 or persons, that shall, after the said last day of June, having a  
 bear or convey any cross-bow, hand-gun, hagbut, or licence in  
 demy-hake, of the length aforesaid, to any place or writing may  
 places, by the commandment of his lord or master that carry his  
 may shoot by authority of this act, to be amended, re- master's gun.  
 paired, delivered, or assayed, so that the said servant or  
 other person so bringing or conveying the said cross-  
 bow, hand-gun, hagbut, or demy-hake, have ready to  
 shew to every person requiring the sight thereof, one  
 licence in writing sealed or subscribed by his said lord  
 or master, to carry and convey the some cross-bow,  
 hand-gun, hagbut, or demy-hake, to the intent to be  
 amended, repaired, assayed, or delivered, as is aforesaid.

XXIII. Provided always, That this act, or any thing The owner of  
 herein contained, shall not extend to any owner of any a ship may  
 ship, for having or keeping of any hand-gun, hagbut, or keep a gun.  
 demy-hake, of the several lengths in this act expressed,  
 or under, only to be had and occupied within any their  
 ship or other vessel, or for the carriage and re-carriage  
 of them or any of them on land, or keeping of them for  
 the only exercise and occupying of them within their  
 said ship or vessel; any thing in this act to the contrary  
 notwithstanding. (See *Stat. 2 & 3 Ed. 6. 14.*  
*repealed by 6 & 7 W. 3. c. 13. s. 3. 33 Hen. 8. c. 6.*)

3 AND 4 EDW. 6. C. 7. ANNO DOM. 1549.

A. D. 1549.

AN ACT OF REPEAL OF A STATUTE MADE IN THE  
 TWENTY-FIFTH YEAR OF KING HENRY THE EIGHTH,  
 TOUCHING THE TAKING OF WILD-FOWL AT CER-  
 TAIN TIMES IN THE YEAR.

Whereas in the five and twentieth year of the reign of 25 H. 8. 11  
 our majesty's father, of most famous memory, king

[E 2]



A. D. 1549. Henry the Eighth, an act was made, containing two branches, whereof the one was against the taking of wild-fowl between the last day of May, and the last day of August, with any nets or engines, upon a pain limited thereupon, as in the said statute more largely doth appear: forasmuch as the occasion of the said branches appeareth sithen to have risen but upon a private case, and that no manner of common commodity is sithen perceived to be grown of the same, being notably, by daily experience, found and known that there is, at this present, less plenty of fowl brought unto the markets, than was before the making of the said act, which is taken to come of the punishment of God, whose benefit was thereby taken away from the poor people, that were wont to live by their skill, in taking of the said fowl, whereby they were wont at that time to sustain themselves, with their poor households, to the great saving of other kinds of victual, of the which aid they are now destitute, to their great and extream impoverishing: humbly beseechen your grace, your majesty's true and faithful subjects, especially such as have their places of habitation nigh unto the fens, that all that branch of the said act made in the said five and twentieth year of your grace's said father, of most noble memory, touching the taking of wild-fowl, in manner as is abovesaid, may be from henceforth by your majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, repealed and utterly void and of none effect, with all and every article, sentence, matter, pains, and forfeitures contained, or otherwise mentioned, in the said branch, as if the same act had never been had nor made.

A repeal of so much of the St. of 25 H. 8. 11. as toucheth the taking of wild fowl with engines at certain times.

No person shall destroy or take away the eggs of any wild-fowl. See further,

II. Provided, and be it enacted by the authority abovesaid, That one other branch, contained in the said act, concerning such persons as shall presume by day or night willingly to withdraw, purloyn, take, destroy, or

convey any manner of eggs of any kind of wild-fowl, A. D. 1549.  
 from or in any nest, place or places where they shall <sup>1 Jac. 1. c. 27.</sup>  
 chance to be layd by any kind of wild-fowl, with every <sup>21 Jac. 1. c. 28</sup>  
 article, sentence, matter, pains, forfeitures and provi- <sup>3 Car. 1. c. 4.</sup>  
 sions, contained or mentioned in this said last branch, <sup>4 & 5 W. &</sup>  
 shall stand in full strength and effect, to all purposes, in- <sup>M. c. 23.</sup>  
 tents and constructions, as if this present act had never <sup>5 Ann. c. 14.</sup>  
 been had nor made. <sup>9 Ann. c. 25.</sup>  
<sup>3 Geo. 1. c. 11.</sup>  
<sup>8 Geo. 1. c. 19.</sup>  
<sup>28 Geo. 2. c. 12.</sup>

1 ELIZ. C. 17. A. D. 1558.

A. D. 1558.

AN ACT FOR PRESERVATION OF SPAWN AND FRY OF  
 FISH.

For the preservation hereafter of spawn, fry, and No person  
 young breed of eeles, salmons, pikes, and of all other shall take  
 fish, which heretofore hath been much destroyed in fry of any  
 rivers and streams, salt and fresh, within this realm, in fish.  
 so much, that in divers places, they feed swine and dogs <sup>13 Edw. 1.</sup>  
 with the fry and spawn of fish, and otherwise (lament-  
 able and horrible to be reported) destroy the same, to the  
 great hinderance and decay of the commonwealth; be  
 it therefore enacted by the queen's most excellent  
 majesty, the lords spiritual and temporal, and the com-  
 mons, in this present parliament assembled, and by the  
 authority of the same, That no person or persons, of  
 what estate, degree, or condition, soever he or they be,  
 from and after the first day of June next coming within  
 any manner of net, weele, but, taining, kepper, lime, crele,  
 raw, fagnct, trolnet, trimenet, trimbote, staltbote, weblis-  
 ter, seur, lanmet, or with any device or engine made of  
 hair, wooll, line or canvas, or shall use any heling-net,  
 or trim-boat, or by any other device, engine, cawtel,  
 wayes or means whatsoever, heretofore made or devised,  
 or hereafter to be made or devised, shall take and kill  
 any young brood, spawn, or fry of eeles, salmon, pike or  
 pikerel, or of any other fish, in any floudgate, pipe at

A. D. 1558. the tail of a mill, weare, or in any straites, streams, brooks, rivers, fresh or salt, within this realm of England, Wales, Berwick, or the marches thereof; nor shall, from and after the first day of June next coming, by any of the ways and means aforesaid, or otherwise, in any river or place above specified, take and kill any salmons or trowts, not being in season, bring kepper salmons, or kepper trowts, shedder salmons, or shedder trowts.

*Of what length fishes must be, that shall be taken and killed.* II. And be it further enacted by the authority aforesaid, That no person or persons, of what estate, degree, or condition he or they shall be of, from and after the said first day of June, by any of the means aforesaid, in any of the rivers or places above named, shall take and kill any pike or pikerel, not being in length ten inches, or more; nor any salmon, not being in length sixteen inches, and more; nor any trowt, not being in length eight inches, or more; nor any barbel, not being in length twelve inches, or more.

*Of what mesh each net shall be.* III. And, to the intent the said young fry, brood, or spawn, may be preserved according to the true meaning hereof, be it further enacted by the authority aforesaid, That no manner of person or persons, from and after the first day of June next coming, shall fish, or take fish with any manner of net, tramell, kepe, wore, hivic, crole, or by any other engine, device, ways or means whatsoever, in any river or other places above mentioned, but only with net or tramell, whereof every mesh or mask shall be two inches and a half broad, angling excepted.

*What nets or other devices may be used for the taking of small fish.* IV. Provided nevertheless, and be it enacted by authority aforesaid, That in all such places where smelts, loches, minneis, bulheads, gudgeons, or eeles have been used to be taken and killed, that in all such places it shall be lawful only for the taking of smelts, loches, minneis, gudgeons and eeles, to use such nets, lepes, and other



engines, devices, ways, and means, as heretofore have A. D. 1558.  
 been used for the taking of the same ; so that such per-  
 son or persons using or occupying such nets or other  
 engines, as is last afore mentioned, do not take, kill, or  
 destroy any other fish with the said nets or engines, con-  
 trary to the tenour and form above in this statute con-  
 tained.

V. And be it further enacted, That if any person or The penalty of the of-  
fender.  
 persons, after the above said day limited in this present  
 act, offend in any of the points before rehearsed, con- Altered by  
1 Geo. 1. c. 11  
st. 2. c. 13.  
 trary to the tenour, form, and purpose of any part of  
 the same, that then every such person and persons so s. 14.  
 offending shall lose and forfeit, for every time of his or  
 their offence, the sum of twenty shillings, and the fish so  
 taken contrary to the tenour hereof, and also the unlaw-  
 full nets, engines, devices, and instruments whatsoever  
 they be, wherewith or whereby such offence shall fortune  
 to be made, committed, or done.

VI. And to the intent that a perfect execution may be What per-  
sons shall  
have autho-  
rity to en-  
quire of and  
determine  
the offences  
aforesaid, and  
who shall  
have the for-  
feitures.  
 had of this present act, be it further ordained by autho-  
 rity aforesaid, That the lord admiral of England, and the  
 mayor of the city of London for the time being, and all  
 and every other person and persons, bodies politick and  
 corporate, which by grant or other lawful ways or means,  
 lawfully have or ought to have any conservation or pre-  
 servation of any rivers, streams, or water, or punish-  
 ments and corrections of offences committed in any of  
 them, shall have full power and authority, by virtue of  
 this act, to enquire of all the offences to be committed  
 and done contrary to the effect and true meaning of this  
 act, within his or their such lawful rule, government,  
 jurisdiction, and conservancy, by the oaths of twelve  
 men or more, and to hear and determine all and every  
 the same offences committed within his or their such ju-  
 risdiction, conservancy, rule and government.



A. D. 1558. VII. And that all such pains and forfeitures, as shall rise or grow by the reason of any such conviction for any the offences aforesaid, shall be to the use of every of the said person and persons, being no body politick or corporate, nor head of any body politick or corporate, before whom such conviction, as is aforesaid, shall be had, and to the use of every such body politick and corporate, as heretofore have lawfully had any fines, forfeitures, and americiaments for any offence lawfully committed or done, in any such their jurisdiction or conservancies, upon conviction had before the head of any such body politick or corporate.

VIII. And that also the lord of every leet within this realm of England and Wales, or the dominions of the same, shall have full power and authority to enquire of all the offences contrary to the purport, tenour, and form of this estatute within the precinct to their said leet; such enquiry to be had in manner and form, and after such sort, as common americiaments, or other things inquirable in their court leet, have been lawfully used and accustomed to be had and made.

IX. And that upon every such presentment had in any court or leet, by the oath of twelve men or more, as is aforesaid, of any offence or offences made contrary to the tenour of this estatute: that then all such forfeitures above in this estatute limited and appointed for such offence, shall be unto the lord of the said leet for the time being, to his own use for ever, and shall be levied in such manner and form, as americiaments for affrays committed within the precinct of such leet have been used and accustomed to be levied.

The forfeiture of the steward of a leet, that doth not give this statute in charge.

X. And if any leet, after the said first day of June, be kept within this realm of England or Wales, or the dominions thereof, and the steward of the said leet for the time being, or other for him, do not charge the jury

sworn in such leet, to enquire of all the offences done A. D. 1558.  
 within the precinct of the said leet, contrary to the  
 tenour and form of this estatute; that then the steward  
 of the said leet to lose and forfeit forty shillings; the one  
 moyety of which forfeitures shall be to the queen's ma-  
 jesty, her heirs and successors, and the other moyety to  
 him that will sue for the same. And if any jury sworn  
 in any leet, and being charged to enquire of the offences  
 committed within the precinct of that leet, do lawfully  
 and willingly conceal and make default in presentment,  
 or do not present the offence and offenders; that then it  
 shall be lawful to the steward or bailly of the leet, or his  
 or their deputy for the time being, to impanel one other  
 jury within the said leet, and to enquire of such conceal-  
 ment, default, or non-presentment, and that upon such  
 concealment, default, or non-presentment, found and  
 presented, every of the said jurors, which so did con-  
 ceal, make default, or not present, shall lose and forfeit  
 for every such offence twenty shillings, to the lord of  
 the said leet, the same to be levied in manner and form  
 as is aforesaid, for the other offences limited and ex-  
 pressed.

The forfeiture  
 of a jury in a  
 leet, that  
 doth conceal  
 any offence.

XI. And it is further enacted by authority aforesaid,  
 That if the offences above-mentioned, touching the tak-  
 ing, killing, or destroying of fish, or fry, and spawn, be  
 not presented at the leet where they shall be committed,  
 within one year next after the offence committed, that  
 the justices of peace in their sessions, justices of oyer  
 and determiner, and justices of assize in their several  
 circuits, shall have full power and authority to enquire  
 thereof, and to hear and determine all the offences com-  
 mitted contrary to the tenour of this estatute.

Who may  
 punish the  
 said offences,  
 if they be not  
 presented in  
 the leet.

XII. Saving always to all and every person or per-  
 sons, bodies politick and corporate, and every of them, all  
 such right, title, interest, claim, privilege, and conser-  
 vation, and enquiry, and punishment of and for any the

A saving of  
 the liberties  
 of all persons  
 having right  
 to enquire of

A. D. 1558. offences aforesaid, as they or any of them lawfully have and enjoy, or of right ought to have and enjoy, by any manner of means, any thing in this act to the contrary notwithstanding. This act to endure to the end of the next parliament. (*Continued, see below.*)

To what persons or waters this statute doth not extend. XIII. Provided always, That this act, nor any thing therein contained, shall not extend to the fishing of the river or water of Tweed; nor to any river or water whereof the queen's majesty is answered of any yearly rent or profit; nor to the owners, farmers, and occupiers of the rivers of Uske, or Wye, in the county of Monmouth, for any fish hereafter to be taken in any the rivers or waters before-mentioned and expressed: but that it shall be lawful, at all seasonable time and times hereafter, for such as have or shall have any manner of interest therein, to take and fish the said rivers and waters in such manner and form, as heretofore hath been used and accustomed, not using any net or engine, to the intent willingly to take, kill, and destroy the spawn, breed, or fry, breeding any kind of fish within the said several rivers or waters; this act or any thing therein mentioned or contained to the contrary notwithstanding. 3 *Car.* 4. *made perpetual, except as to this last section.* See 3 *Jac.* 1. c. 12. 30 *Car.* 2. st. 1. c. 9. 4 & 5 *W. & Mary*, c. 23. 4 *Ann.* c. 21. 9 *Ann.* c. 26. 1 *Geo.* 1. st. 2. c. 18. 5 *Geo.* I. c. 18. 23 *Geo.* 2. c. 26. s. 7. 26 *Geo.* 2. c. 9. 30 *Geo.* 2. c. 21 & 30.—and 33 *Geo.* 2. c. 27.

A. D. 1562.

5 ELIZ. C. 21. A. D. 1562.

AN ACT FOR PUNISHING OF UNLAWFUL TAKING OF  
FISH, DEER, OR HAWKS.

Where as well the queen's majesty, and her most noble progenitors, as also the noblemen, gentlemen, and divers other persons of great dominions, lordships, ma-

How persons  
for unlawful  
fishing, hunt-  
ing in a park,



nors, and possessions, within this realm, have of antient A. D. 1562.  
 and long time had, and many of them now of late, to and taking of  
 their great costs and charges, for the necessary and bet- hawks or  
 ter provision and maintenance of their households, have hawks eggs  
 erected and made in and upon their several demeans, out of ano-  
 grounds, and possessions, as well pools, stagnes, stews, ther's ground,  
 motes, pits, or ponds, for the only increase of fish, and shall be pu-  
 have stored the same with pickerel, breme, tench, carp, nished.  
 and divers other good kinds of fish, for the necessary  
 increase of victuals, and for the better maintenance and  
 provision of their houses, as is aforesaid, and also have  
 imparked, environed, and enclosed many parcels of their  
 said demeans, soils, grounds, and possessions, for the  
 breeding, cherishing, and increase, as well of red as  
 fallow deer, within their several parks and inclosures, for  
 the causes afore-declared, and also have, breeding with-  
 in their woods and grounds, divers eyries of hawks of  
 sundry kinds, to their great pleasure and commodity :  
 Yet nevertheless, the said several waters, grounds,  
 parks, and inclosures so being had, erected, and made,  
 and also being so stored and replenished, have been from  
 time to time by evil-disposed persons, of a very evil,  
 wilful, and insolent disposition, and of malice and dis-  
 pleasure, not only by night-time broken and entred into,  
 but also the heads or dammes of the said ponds, pools,  
 stagnes, motes, stews, or several waters, have been ma-  
 liciously, wilfully, and unlawfully cut out, and the  
 pales, fences, and inclosures of the said parks and  
 grounds broken, cast down, and set open, and the fish,  
 deer, and hawks, within the same, taken, destroyed, car-  
 ried away, and stolen, not only to the great loss and da-  
 mage of the owners thereof, and to the small encourage-  
 ment of other good subjects, minding the careful provi-  
 sion of such necessary victuals, but also to the manifest  
 emboldening of many like wilful malefactors and mali-  
 cious offenders, whereby many riots, manslaughters,



A. D. 1562. mischiefs, and other inconveniencies have been daily perpetrated, and are like to be committed and done, if circumspect remedy be not hereunto provided.

The penalty  
for destroy-  
ing of any  
pool, pond,  
&c. or for  
the taking of  
any fish.  
31 H. 8. c. 2.

II. Be it therefore enacted by the queen's majesty, the lords spiritual and temporal, and the commons of this present parliament assembled, and by the authority of the same, That if any person or persons, after the Feast of Pentecost next coming, shall at any time, by day or by night, unlawfully, without authority, break, cut down, cut out or destroy any head or heads, dam or dams of any ponds, pools, mores, stagnes, stews, or several pits, wherein fish are, or shall happen to be put in or stored withal by the owners or possessioners thereof, or do or shall wrongfully fish in any of the said several ponds, pools, mores, stagnes, stewes, or pits, to the intent to destroy, kill, take, or steal away, any of the same fish against the will, mind or pleasure of the owners or possessioners of the same, not having any lawful title or authority so to do, and thereof be lawfully convicted, at the suit of our sovereign lady the queen, her heirs or successors, or the party grieved, shall suffer imprisonment of his or their bodies by the space of three months, and shall yield and pay to the party grieved his treble damages; and after the said three months expired shall find sufficient sureties for his or their good abearing against the queen our sovereign lady, her heirs and successors, and all her liege people, for the space of seven years after; or else shall remain and continue still in prison without bail or mainprize, until such time as he or they, so offending, can and shall find sufficient sureties, during the said time and space of seven years, as is aforesaid.

The penalty  
for breaking  
of a park,  
and hunting  
of deer.  
3 Jac. 1. c. 13.  
Co. pl. 361.

III. And be it also enacted by authority of this present parliament, That if any person or persons after the said Feast of Pentecost, next coming, at any time by night or by day, in manner aforesaid, wrongfully or unlawfully

break or enter into any park impaled, or any other several A. D. 1562.  
 ground closed with wall, pale, or hedge, and used for the  
 keeping, breeding and cherishing of deer, and so wrong-  
 fully hunt, drive, or chase out, or take, kill, or slay any  
 deer within any such impaled park, or closed ground  
 with wall, pale, or other inclosure, and used for deer as  
 is aforesaid; or do, or shall take away any hawk or The penalty  
 hawks, or the eggs of any of them, by any ways or for taking of  
 means unlawfully out of any the woods or ground of hawks or  
 any person or persons (not having lawful authority or hawks eggs  
 license so to do) and thereof be lawfully convicted at the out of an-  
 suit of our sovereign lady the queen, or the party grieved, other's  
 as is aforesaid; shall likewise suffer imprisonment of his ground.  
 or their bodies by the space of three months, and shall  
 yield and pay to the party grieved his treble damages.  
 And after the said three months expired, shall find good  
 sureties for his or their good abearing, for the space of  
 seven years after, against the queen's majesty, her heirs,  
 and successors, and all her liege people, as is aforesaid;  
 or else shall remain and continue still in prison, without  
 bail or mainprize, until such time as he or they, so of-  
 fending, can and shall find such sufficient sureties during  
 the said time of seven years, as is afore rehearsed.

IV. Provided always, That this act, or any thing therein A park in-  
 contained, extend not to any park, or inclosed ground closed with-  
 hereafter to be made and used for deer, without the grant out licence of  
 or licence of our sovereign lady the queen, her heirs, the queen,  
 successors, or progenitors. &c.

V. Provided always, and be it enacted by the authority The remedy  
 aforesaid, That it shall be lawful for the party grieved of the party  
 to sue and take his further remedy against all and every grieved, and  
 such offender and offenders, for his loss and damages, before whom.  
 and to recover the treble value of the same in this behalf,  
 as well before justices of oyer and determiner, justices  
 of assizes in their circuits, and justices of the peace, as  
 elsewhere, in any other the queen's courts of record;

A. D. 1359. and that upon the true satisfaction of the said treble damages, to the party grieved, or upon the confession and knowledge thereof by the same party, before the said justices in open sessions to be holden within the county where the offence was committed, it shall be at the liberty of the same party grieved, to whom the said offence was committed, to release at his pleasure the said suretiship of good abearing, at any time within the said seven years, or before; any thing in this present act before specified or expressed to the contrary notwithstanding.

VI. And be it further enacted by the authority aforesaid, That the justices of oyer and determiner, justices of assize in their circuits, and justices of the peace and gaol delivery in their sessions, shall, by virtue hereof, have power and authority to enquire, hear, and determine all and singular the offences aforesaid, and to make and award process thereupon, as well upon indictments taken before them, as by bill of complaint, information, or any other action; in which suit or action no essoign, wager of law, nor protection shall be allowed.

In what case the justices of peace may release the offender of the good abearing. See 1 J. c. 27.  
 7 Jac. c. 13.  
 22 & 25 Car. 2. c. 25.  
 4 & 5 W. & M. c. 25.  
 5 Ann. c. 14.  
 9 Geo. 1. c. 20.  
 3 Geo. 1. c. 11.  
 8 Geo. 1. c. 19.  
 10 Geo. 2. c. 2.  
 28 Geo. 2. c. 12.

VII. And be it further enacted by the authority aforesaid, That if any person or persons, at any time hereafter, shall fortune to be bound before any of the justices before-mentioned, to the queen, her heirs, or successors, for his or their good abearing for seven years, according to the tenour of this act, and the same party or parties so bound, shall afterwards, within the said seven years, come before the justices of the peace of the said county where the said offence was committed, or some of them, in open sessions, and there in the said open sessions confess and acknowledge his or their said offence or offences, and be sorry therefore, and satisfy the party or parties grieved, according to the tenour of this act; that then the said justices, before whom the confession shall



be so made, shall and may have power and authority, A. D. 1562.  
 by virtue of this act, in the same open session, or in any  
 other open session afterwards to be holden before the said  
 justices in the said county, within the said term of seven  
 years, if it shall seem good to their discretions, to dis-  
 charge the said recognizance and bond so taken, and  
 also the said party and parties so bound; this act or any  
 thing therein contained to the contrary notwithstanding.

18 ELIZ. C. 5. A. D. 1576.

A. D. 1576.

AN ACT TO REDRESS DISORDERS IN COMMON IN-  
 FORMERS.

(*Made perpetual by 27 Eliz. c. 10. and 31 Eliz. c. 5.*)

For redressing of divers disorders in common in-  
 formers, and for better execution of penal laws, be it  
 enacted *that every informer upon any penal statute shall*  
*exhibit his suit in proper person, and pursue the same*  
*only by himself or by his attorney in court; and that*  
*none shall be admitted or received to pursue against any*  
*person or persons upon any penal statute, but by way*  
*of information or original action and not otherwise; nor*  
*shall have nor use any deputy or deputies at all; and*  
*that upon every such information which shall be exhi-*  
*bited, a special note be made of the very day, month,*  
*and year of the exhibiting thereof into any office or to*  
*any officer which lawfully may receive the same, with-*  
*out any mannner of antedate thereof to be made, and*  
*that the same information be accounted and taken to be*  
*of record from that time forward and not before. And*  
*be it likewise enacted for the consideration aforesaid,*  
*That no process be sued out upon any such information,*  
*until the information be exhibited in form aforesaid;*  
*and that upon every such process shall be endorsed as*

11 H. 7. c. 3.

The duty of  
 an informer  
 in prosecut-  
 ing a suit  
 upon a penal  
 statute, and  
 his punish-  
 ment if he  
 abuse it.

Cro. El. 77.

434.

3 Inst. 192.

See 3 T. R.

362-3, by bin

is an original

action. See

the Statute

4 Hen. 7.

c. 20.

A note of the

day, month,

and year of

the exhibit-

ing of an in-

formation.



A. D. 1576. well the party's name that pursueth the same process, as Indorsement also the statute upon which the information in that behalf made is grounded : and that every clerk making of the process half made out process contrary to the tenor and provision of this awarded upon an information. act, shall forfeit and lose forty shillings for every such offence ; the one half to be to the queen's majesty, her heirs and successors, and the other half to the party against whom any such defective process shall be awarded, to be recovered in any court of record, by action of debt or information, in which no essoin, protection, injunction, or wager of law shall be permitted or allowed.

Where the trial of an issue shall be in a suit upon a penal statute  
*Stat. 381.*

II. And be it further enacted, That no jury shall be compelled to appear in any of the queen's majesty's courts of Westminster, for the trial of any issue in any such suit upon any penal law, for any such offence committed above thirty miles from the city of Westminster, except in case where the attorney-general for the time being, for some reasonable cause in that behalf to be shewed, shall require the same to be tried at the bar, in any of the courts of the queen's majesty, her heirs or successors, at Westminster aforesaid ; which request shall be noted on the backside of the writ of distringas thereupon awarded, to the end the sheriff or his bailiff may and shall signify the same to the jury that are in such case impanelled.

No informer shall compound with the defendant but by consent of the court.  
*2 Bulstr. 137.*  
*Hob. 250.*  
*2 Roll. 103.*  
*136.*

III. And be it further enacted, That no such informer or plaintiff shall or may compound or agree with any person or persons that shall offend, or shall be surmised to offend, against any penal statute, for such offence committed, or pretended to be committed, but after answer made in court unto the information or suit in that behalf exhibited or prosecuted : nor after answer, but by the order or consent of the court in which the same information or suit shall be depending ; upon the pains and penalties hereafter in this present act set down and

declared: and that if any such informer or plaintiff as aforesaid shall willingly delay his suit, or shall discontinue or be nonsuit in the same, or shall have the trial or matter past against him therein by verdict or judgment of law; that then in every such case the same informer or plaintiff shall yield, satisfy and pay unto the party defendant his costs, charges, and damages, to be assigned by the court in which the same suit shall be attempted: for the recovery and execution whereof every such defendant shall immediately, upon the same costs, charges, and damages assigned, have his *capias ad satisfaciendum fieri facias*, or *elegit*, to be awarded unto him out of the same court in which the same shall be so assigned as is aforesaid, as in other cases of execution.

IV. And be it also enacted, That if any person or persons (except the clerks of the court only, for making out of process otherwise than is above appointed) shall offend in suing out of process, making of composition or other misdemeanour, contrary to the true intent and meaning of this statute, or shall by colour or pretence of process, or without process, upon colour or pretence of any matter of offence against any penal law, make any composition, or take any money, reward, or promise of reward for himself, or to the use of any other, without order or consent of some of her Majesty's courts at Westminster; that then he or they so offending, being thereof lawfully convicted, shall stand on the pillory in some market-town next adjoining where the same offence shall be committed, in the open market-time, and there remain by the space of two hours; and shall from and after such conviction for ever be disabled to pursue, or be plaintiff or informer in, any suit or information upon any statute, popular or penal; and shall also for every such offence forfeit and lose ten pounds of lawful English money, the one half thereof to the Queen's Majesty, her heirs and successors, and the other half to

A. D. 1576.

The penalty of an informer delaying or discontinuing his suit, or being nonsuit, &amp;c.

2 Leon. 116.

Savil 50.

3 Bur. 1724.

1 Wils. 1. 39.

The punishment of an informer misbehaving himself in prosecution of his suit, &amp;c.

A. D. 1576. the party grieved thereby, to be recovered in any court of record, by action of debt or information; in which no essoin, protection, injunction or wager of law, shall be permitted or allowed: and that justices of oyer and terminer, justices of assize in their circuits, and justices of peace in their quarter-sessions, shall have full power and authority to hear and determine all offences to be committed or done contrary to the true intent and meaning of this present act.

Parading up- V.-. Provided always, and nevertheless be it enacted, on the statute against maintainance, champerty, &c. That it shall and may be lawful to and for any person or persons grieved by means of any manner of maintainance, champerty, buying of titles or imbracery, to pursue upon any the statutes provided and set forth against maintainance, champerty, buying of titles or imbracery, as he or they might have done before the making of this act; any thing in this act contained to the contrary in any wise notwithstanding.

Penalties given to persons certain and not generally. 2 Salk. 50. VI. Provided also, That this act shall not extend to any suit already depending, nor shall restrain any certain person, body politick or corporate, to whom or to whose use any forfeiture, penalty or suit is or shall be specially limited or granted by virtue of any statute, and not generally to any person that will sue, but that every such certain person, body politick or corporate, which might sue or inform, as if this act were not made, may in such case sue, inform, and pursue, as he or they might have done if this act were never had nor made.

Officers using to exhibit information. 1 Hec. P. C. c. 36. VII. And provided also, That neither this act, nor any thing therein contained, shall in any wise extend to any such officers of record, as have in respect of their offices heretofore lawfully used to exhibit informations or sue upon penal laws, nor to any officers informing or pursuing for matters only concerning his or their offices, but that they and every of them may inform and pursue in that behalf, as they might have done before the



making of this act; any thing in this act contained to A. D. 1576.  
the contrary in any wise notwithstanding.

VIII. This act to take force and effect from the Feast of Easter next coming, and from thenceforth to endure unto the end of the first session of the next parliament. (Made perpetual by 27 *Eliz. c. 10.* 31 *Eliz. c. 5.*)  
Farther provisions relating to former, 22 *El. c. 5.* § 21.  
21 *Jac. 1. c. 4.*  
4 & 5 *W. & M. c. 18.* and 9 *Ann. c. 20.*

23 ELIZ. C. 10. A. D. 1581. *Rep*

A. D. 1581.

AN ACT FOR THE PRESERVATION OF PHEASANTS AND  
PARTRIDGES.

‘ Where the game of pheasants and partridges is within these few years in manner utterly decayed and destroyed in all parts of this realm, by means of such as take them with nets, snares, and other engines and devices, as well by day as by night, and also by occasion of such as do use hawking, in the beginning of harvest, before the young pheasants and partridges be of any bigness, to the great spoil and hurt of corn and grass then standing and growing in the fields.’  
13 *R. 2. st. 1. c. 13.*  
31 *H. 8. c. 12.*

II. For reformation thereof, be it enacted, established, and ordained by the Queen our sovereign lady, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That no manner of person or persons, of what estate, degree, or condition soever, shall at any time or times, from and after the first day of April next ensuing, take, kill, or destroy any pheasants or partridges with any manner of nets, snares, gins, engines, rowsting, lowfling or other devices whatsoever, in the night-time; upon pain of forfeiture for every pheasant so taken, killed or destroyed, contrary to the true mean-  
The penalty for taking or killing of pheasants or partridges in the night.  
11 *H. 7. c. 17.*  
3 *Bulstr. 178.*  
*Burn, v. 1.*  
490.



A. D. 1581. ing of this act, the sum of twenty shillings; and for every partridge so taken, killed or destroyed, the sum of ten shillings; the which said penalties and forfeitures, if every person or persons so offending do not pay within ten days next after his or their conviction, then to have one month's imprisonment without bail or mainprize; and further, over and besides such forfeiture or imprisonment, to put in bond with good sureties for the space of two years, that he shall not take, kill or destroy any partridges or pheasants, contrary to the true meaning of this act; the same bond to be taken by some justice of the peace of the county where the said offence shall be committed: the one half of all which said several forfeitures to be to the chief lord or lords of the liberties, lordships, or manors, upon and in which the same shall be so taken, killed or destroyed, and the other moiety to such person or persons as will sue for the same in any of her Majesty's Courts of Record, by bill, plaint or information; in which suit no essoin, protection, or wager of law shall be allowed.

Who shall have the forfeitures, and by what means they shall be recovered.

III. Provided always, That if such person to whom the one half of the said forfeiture is appointed for the taking, killing or destroying of partridges or pheasants, contrary to the tenor and true meaning of this act, shall dispense with, licence or procure any taking, killing or destroying of any partridges or pheasants, contrary to the form of this act, that then all such forfeitures and penalties as such person or persons should have by virtue of this act, shall be to the poor of the parish where such taking, killing or destroying shall be committed, and that to be levied or recovered in manner and form aforesaid, by any one of the church-wardens of the parish where the offences shall be committed.

The forfeiture for hawking in

IV. And be it likewise further enacted by the authority aforesaid, That no manner of person or persons

from and after the said first day of April shall hawk, or with his spaniels hunt, in any ground where corn or other grain shall then grow, (except it be in his own ground) at such time as any eared or coddled corn or grain shall be standing and growing upon the same, nor before such time as such corn and grain shall be shocked, cocked, hilled or copped; upon pain of forfeiture for every time that he shall so hawk or hunt as aforesaid, (without the consent of the owner of the corn or grain) to such person or persons as shall be owner of the said eared or coddled corn or grain, forty shillings, and the same to be levied or recovered in manner and form aforesaid.

A. D. 1581.

eared or  
coddled corn  
standing, or  
before the  
corn shall be  
shocked.

V. Provided always, and be it further enacted by the authority aforesaid, That the justices of assizes in their circuits, and justices of the peace in every shire, county, and town corporate within this realm, in their sessions, within their several limits of their commission, and stewards of leets, liberties and lawdays, within their several jurisdictions, shall and may, by virtue hereof, hear, enquire and determine of all and every offence or offences which shall be committed within the precinct of their liberties, jurisdictions or franchises against the tenor of this act: and further, That every justice of the peace within every county of this realm, shall within the limits of his commission have power and authority by virtue hereof, to examine all offenders in the premisses within the county where he is or shall be justice, if so be that the said offence or offences shall not before be heard or determined by the justices of assize in their circuits, or by the stewards of leets, liberties or lawdays within their said several jurisdictions; and also to take bond with good sureties for his and their appearance that shall so offend, to appear at the next general sessions of the peace to be holden within the same county where the same offence shall be committed, to answer the said offence and

What officers  
may hear and  
determine the  
offences  
aforesaid.

A justice of  
peace may  
examine an  
offender,  
and bind him  
to appear at  
the next ses-  
sions.

A. D. 1581. to pay the penalties, or receive the punishment by this act appointed or limited.

Pheasant  
and par-  
tridges un-  
willingly  
taken and let  
go again.

VI. Provided always, That this act shall not in any wise extend to lowbellers, framellers or others, which shall unwillingly happen to take any partridges or pheasants by night under any framel, lowbel, roadnet or other engine, so as they and every of them do presently loose and let go every pheasant and partridge so taken, and suffer them presently to fly and go at large at the place where they shall happen so to be taken, without willingly killing or wilfully hurting any such pheasant or partridge so taken in any manner of sort: any thing in this act contained to the contrary notwithstanding.  
*1 Jac. 1. c. 27. 7 Jac. 1. c. 11.*

A. D. 1604.

2 JAC. 1. c. 27. A. D. 1604. *Rep*

AN ACT FOR THE BETTER EXECUTION OF THE INTENT AND MEANING OF FORMER STATUTES MADE AGAINST SHOOTING IN GUNS, AND FOR THE PRESERVATION OF THE GAME OF PHEASANTS AND PARTRIDGES, AND AGAINST THE DESTROYING OF HARES WITH HARE-PIPES, AND TRACING HARES IN THE SNOW.

Penalties for  
destroying of  
pheasants,  
partridges,  
pigeons,  
hares.

‘ Forasmuch as there be divers good and necessary laws and statutes which do inflict and impose divers great and heavy penalties, punishments, and forfeitures upon such as should with any guns, nets, cross-bows, or other instruments or engines, spoil or destroy the game of pheasants, partridges, hearn, mallard, and such like, and upon such as kill or destroy hares with hare-pipes, cords, or other engines, or should kill any hare by tracing and coursing them with dogs in the snow: and nevertheless of late years, the several games above-mentioned have been more excessively and out-

‘rageously spoiled and destroyed, than hath been in A. D. 1604.  
 ‘former ages, especially by the vulgar sort, and men of  
 ‘small worth, making a trade and a living of the spoil-  
 ‘ing and destroying of the said games, who are not of  
 ‘sufficiency to pay the said penalties in the said statutes  
 ‘mentioned, nor to answer the costs and charges of any  
 ‘that should inform and prosecute against them in any  
 ‘of his said majesty’s courts of record at Westminster,  
 ‘upon any of the said penal laws and statutes; by rea-  
 ‘son whereof few suits have been attempted upon the  
 ‘said laws, and for the said forfeitures, whereby the  
 ‘good thereby meant and hoped hath not succeeded, and  
 ‘thereby great scarcity of the said games in all, or in  
 ‘the most parts of this realm, hath followed, and pre-  
 ‘sently is, and so is like to be, if some remedy be not in  
 ‘that behalf provided:’

II. Be it therefore enacted by the authority of this *Burn, v. 1.*  
 present parliament, That all and every person and per- *485 and 490.*  
 sons, <sup>as</sup> which from and after the first day of August next  
 following, shall shoot at, kill or destroy, with any gun,  
 cross-bow, stone-bow, or long-bow, any pheasant, part-  
 ridge, house-dove, or pigeon, hearn, mallard, duck,  
 teal, widgeon, grouse, heath-cock, moregame, or any  
 such fowl, or any hare; or after the said first day of  
 August, shall take, kill, or destroy, any pheasant, part-  
 ridge, house-dove, or pigeon, with setting-dogs and  
 nets, or with any manner of nets, snares, engines, or in-  
 struments, whatsoever; or shall take the eggs of any  
 pheasant, partridge, or swans, out of the nests, or will-  
 ingly break, spoil, or destroy the same in the nests; or  
 after the said first day of August shall trace or course  
 any hares in the snow, or at any time take or destroy  
 any hares with any hare-pipes, cords, or with any such  
 instruments or other engines: and the same offence or of- *One witness*  
 fences being proved, by the confession of the party, or *sufficient.*  
 by the testimony of two sufficient witnesses upon oath be- *7 Jac. 1.*  
 c. 11. s. 8.



A. D. 1604. fore two or more justices of peace of the same county, city, or town corporate, wherein the offence shall be committed, or the party offending apprehended, shall be by the said justices of peace, for every such offence committed to the common gaol of the said county, city, or town corporate, where the offence shall be committed, or the parties apprehended, there to remain for three months without bail or mainprize, unless that the said offender do or shall forthwith upon the said conviction, pay, or cause to be paid, to the churchwardens of the said parish where the said offence shall be committed, or the party apprehended, to the use of the poor of the said parish, the sum of twenty shillings for every pheasant, partridge, house-dove, pigeon, bearn, mallard, duck, teal, widgeon, grouse, heath-cock, more-game, or any such fowl; and for every egg of pheasant, partridge, or swan, and for every hare, which any and every such person and persons so offending and convicted as aforesaid, shall take, kill, or willingly destroy, contrary to the true purport and true meaning of this statute; or after one month after his commitment, together with two sufficient surties, become bound by recognizance in the sum of twenty pounds a-piece to the king's majesty's use, his heirs and successors, with condition that he the said party so offending shall not at any time hereafter shoot at, kill, take, or destroy, any of the said games before-mentioned, by any of the means aforesaid: which said recognizances shall be taken by any two or more justices of peace of the said county, city, or town corporate, where the offender shall be so imprisoned as aforesaid, and shall be returned to the then next quarter session, and there to remain of record as other recognizances taken for the peace.

The penalty for keeping a greyhound, setting-dog, &c. III. And for the better preservation of deer, hares, and other the games aforesaid, be it further enacted by the authority aforesaid, That all and every person and per-

sons which, from or after the said first day of August, A. D. 1604. shall have or keep any greyhound for coursing of deer or hare, or setting-dog or dogs, or net or nets, to take pheasants or partridges, except such person or persons which shall be seised in their own right, or in the right of their wives, of lands, tenements, or hereditaments, of the clear yearly value of ten pounds by the year or more, over and above all charges and reprises, of some estate of inheritance; or of lands, tenements, or hereditaments, in his own right, or in right of his wife, for term of life or lives, of the yearly value of thirty pounds over and above all charges and reprises; or be possessed of goods or chattels to the full value of two hundred pounds to his own use; or be the son or sons of any knight, or of any baron of parliament, or of some person of higher degree, or the son and heir-apparent of any esquire; and being thereof convicted as aforesaid, shall, by the said justices of the peace, be committed and imprisoned in manner and form as in and by this present act before is expressed, specified, and declared: except such person and persons so offending and thereof convicted as aforesaid, do forthwith pay, or cause to be paid, to the churchwardens of the said parish where the said offence shall be committed, or the party apprehended, to the use of the poor of the said parish, the sum of forty shillings of good and lawful money of England.

IV. And be it further enacted by the authority aforesaid, That every person and persons which, at any time after the said first day of August, shall sell, or buy to sell again, any deer, hare, partridge, or pheasant, (except partridge and pheasants reared and brought up in house or houses, or brought from beyond the seas,) shall forfeit for every deer so bought and sold forty shillings; for every hare ten shillings; and for every partridge ten shillings; and for every pheasant so to be bought and sold twenty shillings: of all which forfeitures the

The penalty  
for selling, or  
buying, to sell  
again, deer,  
hare, par-  
tridge or  
pheasant.

A. 15. 1600. one moiety shall be to him or them that will sue for the same by bill, radictment, or information, and the other moiety to the poor of the parish where the said offence or offences shall be committed.

No punishment to be inflicted by the authority aforesaid, That no person or persons shall or may after the said first day of August be punished, by force of any former statute or law, for any of the said offences for which by force of this law any punishment shall be inflicted:

Which offences may hereafter be determined by the justices of the peace or more together out of any sessions, shall and may by force of this present act have full power and authority to examine, hear, punish and determine all offences to be committed against this present statute, and to administer oaths as aforesaid, and perform and execute all and every act and thing fit or requisite for the due execution of this present act.

Who may take pheasants and partridges with nets, and when. Repeated by 7 Jac. 1. c. 11. s. 6.

VI. Provided always, That it shall and may be lawful for every person or persons which have or shall have free warren, and to and for every lord of a manor, and to every freeholder which is or shall be seised in his own right, or in the right of his wife, of lands, tenements, or hereditaments, to the clear yearly value of ten pounds or more by the year, over and above all charges or reprises, of some estate of inheritance; or of lands, tenements, or hereditaments, in his own right, or in the right of his wife, for term of life or lives, of the yearly value of thirty pounds over and above all charges and reprises; or be, or which shall be, worth in goods or chattles two hundred pounds: by him or themselves, or by his or their menial servants (sufficiently authorised from his or their master for that purpose), to take pheasants and partridges in the day-time only with nets, in and upon his and their own, or his and their masters free warren,

manor, and freehold, or on any part of them, betwixt the A. D. 1601.  
 Feast of St. Michael the Archangel and the Feast of the  
 Birth of our Lord God yearly; any thing in this law to  
 the contrary notwithstanding.

VII. And be it also further enacted by the authority <sup>Licence to</sup>  
 aforesaid, That it shall and may be lawful to and for <sup>shoot in a</sup>  
 every person and persons keeping any hawk or hawks, <sup>gun for</sup>  
 which at the general quarter sessions of the county <sup>hawks-meat.</sup>  
 (where he and they shall dwell) shall be licensed to  
 shoot hail-shot in hand-guns or birding-pieces, at crow,  
 chough, pyc, rook, ring-dove, jey, or smaller birds, for  
 hawks-meat only, to shoot and kill hawks-meat, accord-  
 ing to the said licence only: so that such party so to be  
 licensed do at the same quarter sessions wherein he shall  
 be licensed, become bound to the king's majesty by re-  
 cognizance in twenty pounds not to shoot at any the  
 fowl or game at which shooting is prohibited by this  
 law; and so that he or they shall not shoot in any hand-  
 gun, or other gun, within six hundred paces of any her-  
 nery, nor within one hundred paces of any pigeon-  
 house, nor in any park, forest, or chase, whereof the  
 party so licensed, or his master, is or shall not be the  
 owner, keeper, or governor: for which licence and re-  
 cognizance the clerk of the peace is to take only twelve  
 pence, and no more. This law to continue to the end of <sup>Continuance</sup>  
 the first session of the next parliament. (3 Car. 1. c. 4.) <sup>of this sta-</sup>  
 Continued until the end of the first session of the next <sup>tute.</sup>  
 parliament, and farther continued by 16 Car. 1. c. 4.

3 JAC. 1. c. 12. A. D. 1605.

A. D. 1605.

AN ACT FOR THE BETTER PRESERVATION OF SEA-  
 FISH.

‘ Forasmuch as it is certainly known by daily expe- <sup>13 Ed. 1.</sup>  
 rience, that the brood of sea-fish is spawned and lieth <sup>c. 47.</sup> The forfei-



A. D. 1605. ' in still waters, where it may have rest to receive  
 ' nourishment, and grow to perfection, and that it is  
 ' there destroyed by wears, draw-nets, and nets with  
 ' canvas, or like engines in the middle or bosom of them,  
 ' in harbours, havens, and creeks within this realm, to  
 ' the great damage and hurt of fishermen, and hindrance  
 ' of the commonwealth, for that every wear near the  
 ' main sea taketh, in twelve hours, sometimes the quantity  
 ' of five bushels, sometimes ten, sometimes twenty or  
 ' thirty bushels of the brood of sea-fish; and also those  
 ' which use draw-nets, nets with canvas, or engines in  
 ' the midst of them, do every day they fish destroy the  
 ' brood of all the sorts of fish aforesaid in great multi-  
 ' tudes:'

Forfeiture  
 for fishing  
 with certain  
 nets and  
 engines.

II. For reformation whereof, be it enacted by the au-  
 thority of this present parliament, That every person and  
 persons that from and after the five and twentieth day of  
 July next ensuing this session of parliament, shall erect  
 or set up any new wear or wears along the sea-shore, or  
 in any haven, harbour, or creek, or within five miles of  
 the mouth of any haven or creek, or shall willingly take,  
 destroy, or spoil any spawn, fry, or brood of any sea-  
 fish, in any wear or other engine or device whatsoever,  
 shall forfeit for every time so erecting, setting up, tak-  
 ing, destroying, or spoiling, contrary to this act, the  
 sum of ten pounds of good and lawful money of Eng-  
 land, the one half to the king's majesty, his heirs or suc-  
 cessors, and the other half to him that will sue for the  
 same: and that every person which after the first day of  
 October next ensuing this session of parliament, in any  
 haven, harbour, creek, or within five miles of the mouth  
 of any haven, harbour, or creek of the sea, shall fish  
 with any draw-net or drag-net under three inches meash,  
 viz. one inch and an half from knot to knot, except for  
 the taking of smoulds in Norfolk only, or with any net  
 with canvas, or other engine or devise, whereby the

spawn, fry, or brood of sea-fish may be destroyed, shall A. D. 1605. forfeit such net, and also forfeit for every time so doing, ten shillings of lawful money of England, the one half to the use of the poor people of the city, town corporate, borough, market town, parish, or liberty, where the offence or offences shall be committed, and the other half to the person that shall sue for the same; the said forfeitures to be levied to the uses aforesaid, by the mayor, bailiff, or other head officer of every city, borough, or town corporate: and by warrant of one or more justices of peace, it shall be lawful for the constables and churchwardens of every market town, parish, or liberty within which any such offence or offences shall be done, by way of distress and sale of the offender's goods, rendering to them the surplusage, according to the order of former statutes in such cases of forfeitures ordained.

III. Provided always, That this act, or any thing therein contained, shall not extend to punish any person or persons for using any net or nets of lesser meash than is by this statute appointed, only for taking of herrings, pilchards, sprats, or lavidnian; any thing in this act to the contrary in any wise notwithstanding.

What sort of fish may be taken with the nets prohibited.

IV. Provided further, That this act shall not extend to the isle and county of Anglesey.

3 JAC. I. CAP. XIII. A. D. 1605.

AN ACT AGAINST UNLAWFUL HUNTING, STEALING  
OF DEER AND CONIES.

‘ Whereas since the making of the statute of Quinto  
‘ Reginæ Elizabethæ, cap. 21. there have been divers  
‘ grounds inclosed, and used and kept for the preserva-  
‘ tion and maintenance of deer and conies; and whereas  
‘ there is not by the said statute of Quinto Elizab. neither

A. D. 1605. ‘ by any other act now in force, any sufficient remedy  
 ‘ provided against such malefactors and evil-disposed  
 ‘ persons, as shall chase, hunt, or kill any the deer or  
 ‘ conies within such grounds, sithence the said statute  
 ‘ of Quinto Elizabethæ inclosed and kept, and used for  
 ‘ the maintenance and preservation of the said game as  
 ‘ aforesaid, or any former grounds, which have been  
 ‘ sithence the making of the said statute in any part  
 ‘ altered: by reason whereof many riots, manslaughter-  
 ‘ ters, mischiefs, and other inconveniencies have been  
 ‘ daily committed and done, and like to be committed  
 ‘ and done, if circumspect remedy be not hereunto pro-  
 ‘ vided:’

*Bern.*, 7. 1.  
 475, and 487.

The penalty  
 for breaking  
 a park or  
 warren, or for  
 hunting of  
 deer or  
 conies.

13 *Car.* 2.

*st.* 1. c. 10.

Farther pro-  
 vided by

7 *Jac.* 1. c. 13  
 s. 7.

II. Be it therefore enacted by the king's most excel-  
 lent majesty, the lords spiritual and temporal, and the  
 commons, of this present parliament assembled, and by  
 the authority of the same, That if any person or per-  
 sons, after the Feast of St. James the Apostle next en-  
 suing, shall in the night-time, or by day, wrongfully or  
 unlawfully break or enter into any park impaled, or any  
 other several grounds, inclosed with wall, pale, or hedge,  
 and used or kept for the keeping, breeding, and cherish-  
 ing of any deer or conies, and wrongfully or unlawfully  
 shall hunt, drive, or chase out, or take, kill, or slay any  
 deer or conies within any such impaled park, or closed  
 ground with pale, wall, or other inclosure as aforesaid,  
 against the will, mind, or pleasure of the owners, occu-  
 piers, or possessioners of the same, not having lawful  
 title or authority so to do, and thereof shall be lawfully  
 convicted at the suit of our sovereign lord the king, his  
 heirs or successors, or the party grieved, shall suffer  
 imprisonment of his or their bodies by the space of three  
 months; and also shall yield and pay to the party  
 grieved his treble damages and costs, to be assessed and  
 rated by the justices before whom he or they shall be  
 convicted, after the said three months expired; and

shall find sufficient sureties for his and their good abear- A. D. 1605.  
 ing against the king, his heirs and successors, and all  
 his liege people, for the space of seven years after, or  
 else shall remain and continue still in prison without bail  
 or mainprize, until such time as he or they so offending  
 shall find sufficient sureties during the said time and  
 space of seven years.

III. And be it likewise enacted by the authority afore- What justices  
 said, That the justices of oyer and terminer, justices of may hear  
 assize in their circuits, and justices of peace and gaol and deter-  
 delivery in their sessions, shall by virtue hereof have mine the of-  
 power and authority to enquire, hear, and determine all ences afore-  
 and singular the said offences, by examination of the of- said.  
 fenders, and to make and award process thereupon, as  
 well upon indictments taken before them, as by bill of  
 complaint, information, or any other action; in which  
 said suit or action no essoin, wager of law or protection  
 shall be allowed.

IV. And be it also enacted by the authority aforesaid, The remedy  
 That it shall and may be lawful to the party grieved, to of the party  
 sue and take his further remedy against all and every grieved.  
 such offender and offenders, for his loss and damages,  
 and to recover the treble value of the same in that be-  
 half, as well before the justices of oyer and terminer,  
 justices of assize in their circuits, and justices of the  
 peace and gaol delivery in their sessions, or elsewhere in  
 any other the king's majesty's courts of record at West-  
 minster; and that upon true satisfaction of the said tre- In what case  
 ble damages to the party grieved, or upon the confession the suretyship  
 or acknowledgment thereof by the said party offending, of the good  
 before the justices in open sessions holden for the county behaviour  
 wherein the same offence shall be committed, it shall be re- may be re-  
 leased by the party  
 at the liberty of the said party grieved, to whom the grieved.  
 said offence is committed, to release at his pleasure the  
 suretyship of the good behaviour, at any time within the  
 said seven years or before; any thing in this present



A. D. 1605. act before-mentioned or declared to the contrary notwithstanding.

Penalty for shooting with gun or bow, at deer or conies, or for keeping of engines, &c. V. And be it also further enacted by the authority aforesaid, That if any person or persons not having any manors, lands, tenements, or hereditaments, of the clear yearly value of forty pounds, or not worth in goods or chattels the sum of two hundred pounds, shall use any gun, bow, or cross-bow, to kill any deer or conies, or shall keep any buckstalls or engine-hayes, gate-nets, purse-nets, ferrets, or coney-dogs, except such person or persons as shall have any ground imparked with pale, or inclosed with wall or hedge as aforesaid, used for the keeping, breeding, or cherishing of any deer or conies, the increasing of which said conies shall amount to the clear yearly value of forty shillings to be letten at the least, or keepers or warreners in their parks, warrens, or grounds belonging to their charge; that then any person having lands, tenements, or hereditaments of the clear yearly value of one hundred pounds in fee-simple, fee-tail, or for life, in his own right, or in the right of his wife, may take from the person or possession of such malefactor or malefactors, and to his own use for ever keep, such guns, bows, cross-bows, buckstalls, or engine-hayes, gate-nets, purse-nets, ferrets and coney-dogs.

In what case the justices may discharge the suitor of good abearing. VI. And be it further enacted by the authority aforesaid, That if any person or persons at any time hereafter shall fortune to be bound before any the justices before-mentioned, to the king, his heirs or successors, for his or their good abearing for seven years, according to the tenor of this act, and the same party or parties so bound, shall afterward within the said seven years come before the justices of the peace of the said county where the said offence was committed, or some of them, in open quarter-sessions, and there in the said sessions confess and acknowledge his or their said offence or of-

fences, and that he or they is or are sorry therefore, and A. D. 1605.  
 satisfy the party or parties grieved, according to the  
 tenor of this act: that then the same justices before  
 whom the said confession shall be so made, shall and may  
 have power and authority by virtue of this act, in the  
 same open sessions, or in any other sessions afterwards  
 to be holden before the said justices in the said county,  
 within the said term of seven years, if it shall seem good  
 to their discretions, to discharge the said recognizance  
 and bond so taken, and also the said party and parties so  
 bound; this act, or any thing therein contained, to the  
 contrary thereof notwithstanding.

VII. Provided always, That this act, or any thing  
 herein contained, do not extend to any park or inclosed  
 ground, hereafter to be made and used for deer or conies,  
 without the grant or licence of our sovereign lord the  
 king, his heirs or successors.

VIII. Provided always, and be it further enacted,  
 That this act, nor any thing therein contained, shall  
 extend to any offence or offences concerning the hunt-  
 ing, chasing, or killing of deer or conies, which shall be <sup>Repealed by</sup>  
 done or committed in the day-time, but only to such of- <sup>7 Jac. 1. c. 13.</sup>  
 fences as shall be hereafter done or committed in the  
 night-time only; any thing in this act contained to the  
 contrary thereof notwithstanding. (3 Car. 1. c. 4.  
 Continued until the end of the first session of the next  
 parliament; and farther continued by 16 Car. 1. c. 4.)

7 JAC. 1. c. 11. A. D. 1609. *Rep*

A. D. 1609.

AN ACT TO PREVENT THE SPOIL OF CORN AND  
 GRAIN, BY UNTIMELY HAWKING, AND FOR THE  
 BETTER PRESERVATION OF PHEASANTS AND PAR-  
 TRIDGES.

Whereas in the first session of this present par-<sup>The penalty</sup>  
 liament there was a good law made, amongst other <sup>for killing of</sup>

[G]

A. D. 1600. ' things, for the preservation of the game of pheasants  
pheasants or ' and partridges, which hath not yielded that good suc-  
partridges at ' cess as was by the same law hoped for and intended,  
undue times, ' through disorderly and unseasonable hawking, where-  
or by undue ' means.

1 Jac. 1. c. 27. ' by great quantity of corn and grain hath been and is  
Burn, v. 1. ' not only uncharitably spoiled and destroyed, but great  
490. ' numbers of pheasants and partridges thereby killed  
' and spoiled, before they be either fit to be hawked at,  
' or to be used for food or diet :

II. For the preventing of both which inconveniencies  
and mischiefs, Be it enacted by the authority of this  
present parliament, that all and every person or persons  
whatsoever, which at any time after the end of this pre-  
sent session of parliament doth or shall hawk at, destroy  
or kill any pheasant or pheasants, partridge or partridges,  
with any kind of hawk or hawks, dog or dogs, by colour  
of hawking, between the first of July and the last day  
of August, and the same offence or offences being  
proved by the confession of the party, or by the testi-  
mony of two sufficient witnesses upon oath, before two  
or more justices of the peace of the said county, city, or  
town corporate wherein the offence shall be committed,  
or the party offending apprehended, shall be by the said  
justices of the peace, for every such offence, committed  
to the common gaol of the said county, city, or town  
corporate, where the offence shall be committed, or the  
parties apprehended; there to remain for one whole  
month without bail or mainprise, unless that the said of-  
fender do or shall forthwith upon the said conviction  
pay, or cause to be paid, to the churchwardens of the  
said parish, or unto the overseers of the poor, or some  
of them, where the said offence shall be committed, or  
the party apprehended, to the use of the poor of the  
same parish, the sum of forty shillings for every such  
hawking at any pheasant or partridge, and twenty shil-  
lings for every such pheasant or partridge which any



and every such person and persons so offending and convicted (as aforesaid) by himself, his hawk or hawks, dog or dogs, shall take, kill, or destroy, contrary to the true purport, intent, and meaning of this present statute. A. D. 1609.

III. Provided always, and be it enacted by the authority aforesaid, That if any person or persons shall be at any time hereafter convicted and punished by virtue of this law, that then the party so punished shall not for the same offence be eftsoons called in question, and punished by virtue of any other law touching or concerning the like offences. He that is punished by this law shall be excused for any other.

IV. Provided also, That no offenders shall be impeached or punished by virtue of this act, unless he or they be accused as delinquent, before the said justices of peace, within six months next after the said offence or offences committed or done. Within what time an offender shall be accused.

‘ V. And whereas by a proviso in the said statute contained, it is provided, That it shall and may be lawful to and for every person and persons which have or shall have free warren, and to and for every lord of a manor, and to every freeholder which is or shall be seised in his own right, or in the right of his wife, of lands, tenements, or hereditaments, to the clear yearly value of ten pounds or more by the year, over and above all charges and reprises, of some estate of inheritance; or of lands, tenements, or hereditaments, in his own right, or in the right of his wife, for term of life or lives, of the yearly value of thirty pounds, over and above all charges and reprises; or be or which shall be worth in goods or chattels two hundred pounds; by him or themselves, or by his or their menial servants (sufficiently authorised from his or their master for that purpose) to take pheasants and partridges (in the day-time only) with nets, in and upon his and their own, or his or their master’s free warren,



A. D. 1609. ‘ manor and freehold, or on any part of them, betwixt  
 ‘ the Feast of St. Michael the Archangel, and the Feast  
 ‘ of the Birth of our Lord God yearly; any thing in  
 ‘ the said law to the contrary notwithstanding: by  
 ‘ colour of which liberty so given by the said proviso,  
 ‘ it is found by experience, that the said games of pheasants and partridges have been and still are likely to be  
 ‘ much spoiled and destroyed by many mean tenants  
 ‘ and freeholders, against the will of the lords or  
 ‘ owners of inheritance of the said lands and tenements.’

A repeal of a branch of the statute of 1 Jac. 1. c. 27. VI. Be it therefore enacted by the authority aforesaid, That the said proviso, and every clause, article, and thing therein contained, shall be, from the end of this present session of parliament, utterly repealed, frustrate, and made void; any thing in the said proviso contained to the contrary notwithstanding.

Who may take pheasants and partridges, where and when.

VII. And that it shall and may be lawful for every person or persons which have or shall have free warren, and to and for every lord of a manor, and to and for every freeholder which is or shall be seised in his own right, or in the right of his wife, of lands, tenements, and hereditaments, to the clear yearly value of forty pounds or more by the year, over and above all charges and reprises, of some estate of inheritance; or of lands, tenements, and hereditaments, in his own right, or in the right of his wife, for term of life or lives, of the yearly value of fourscore pounds, over and above all charges and reprises; or which shall be worth in goods or chattels four hundred pounds; by him or themselves, or by his or their menial and household servants (sufficiently authorized from his or their master for that purpose) to take pheasants and partridges (in the day-time only) in and upon his and their own, or his and their master's free warren, manor, and freehold as aforesaid, or on any part of them, betwixt

the Feast of St. Michael the Archangel and the Birth of A.D. 1609.  
 our Lord God yearly; any thing in the said law before-  
 mentioned to the contrary notwithstanding.

‘ VIII. And whereas the said games of pheasants and  
 ‘ partridges are excessively spoiled and destroyed by  
 ‘ base persons, of bad and mean condition, making a  
 ‘ trade and living of the spoiling and destroying of the  
 ‘ said games, who are not of sufficiency to pay any  
 ‘ penalty in any former statute mentioned, nor to an-  
 ‘ swer the costs and charges of any that should inform  
 ‘ and prosecute against them in any of his majesty’s  
 ‘ courts: by reason whereof, and for that the said of-  
 ‘ fenders are hardly discovered, and seldom or never  
 ‘ found offending in the presence of divers witnesses, so  
 ‘ that it is very hard to convict them by the testimony  
 ‘ of more witnesses than one, by reason that they spoil  
 ‘ and destroy the said games secretly, and for the most  
 ‘ part in the night-time, and do carry such pheasants  
 ‘ and partridges as they so destroy, likewise by night, to  
 ‘ cities and market-towns, to be sold:’ be it therefore  
 further enacted by the authority aforesaid, That all and  
 every person or persons, which from and after the first  
 day of September next, shall take, kill, or destroy any  
 pheasant or partridge with setting-dogs and nets, or  
 otherwise with any manner of nets, snares, or engines,  
 and the same offence or offences being proved by the con-  
 fession of the party, or by the testimony of one sufficient  
 witness upon oath, before two or more justices of the  
 peace of the same county, city, or town corporate,  
 wherein the offence shall be committed, or the party of-  
 fending apprehended, shall be, by the said justices of  
 peace, for every such offence, committed to the com-  
 mon gaol of the said county, city, or town corporate,  
 where the offence shall be committed, or the party ap-  
 prehended, there to remain for three months without  
 bail or mainprize, unless that the said offender shall

Penalty for  
 taking any  
 pheasants or  
 partridges  
 with setting-  
 dogs, nets,  
 &c.

A. D. 1609. forthwith pay or cause to be paid to the churchwardens or overseers of the poor of the said parish where the said offence shall be committed, the sum of twenty shillings for every pheasant or partridge, which any and every such person or persons so offending shall take, kill, or destroy as aforesaid, contrary to the purport and true meaning of this statute; and further to become bound by recognizance in the sum of twenty pounds to his majesty, his heirs and successors, with condition that he the said party so offending shall not at any time thereafter take, kill, or destroy any pheasant or partridge; which said recognizance shall be taken by any one or more justices of peace of the said county, city, or town corporate, where the said offence shall be committed as aforesaid, and shall be returned to the then next quarter-sessions, and there to remain of record as other recognizances taken for the peace.

Officers may search the houses of persons suspected to offend.

IX. And be it further enacted, That every constable and headborough in every county, city, town corporate, and other place where they shall be sworn officers, shall and may, by virtue of this present act, (bringing with them to that purpose a lawful warrant under the hands of two justices of the peace of the county, city, liberties, or town corporate) have full power and authority to enter into and search the house or houses of any person or persons (other than such as by this present act are allowed to take pheasants and partridges with nets as aforesaid) being suspected to have any setting-dogs or nets for the taking of pheasants and partridges; and wheresoever they shall find any such setting-dogs or nets, the same to take, carry away, and detain, kill, destroy, and cut in pieces, as things prohibited by this act, and forfeited to such of the said officers as shall find out and take the same as aforesaid.

Continuance of this act.

X. This law to continue unto the end of the first session of the next parliament, and no longer. (3 Car. 1.



c. 4. continued until the end of the first session of the A. D. 1609.  
 next parliament, and farther continued by 16 *Car.* 1.  
 c. 4.)

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7 JAC. 1. c. 13. A. D. 1609.

AN ACT FOR THE EXPLANATION OF ONE STATUTE  
 MADE IN THE SECOND SESSION OF THIS PRESENT  
 PARLIAMENT, INTITULED, ‘ AN ACT AGAINST UN-  
 LAWFUL HUNTING AND STEALING OF DEER, AND  
 CONIES.’

‘ Whereas question and doubt hath grown and risen 3 Jac. 1. c. 13.  
 ‘ upon the exposition of a statute made in the second  
 ‘ session of this present parliament, intituled, “ An Act  
 ‘ against unlawful hunting and stealing of deer and  
 ‘ conies,” for that in the body of the said act all un-  
 ‘ lawful hunting, driving, or chasing out, or taking,  
 ‘ killing, or slaying any deer or conies within any the  
 ‘ parks, places, or grounds, in the said statute men-  
 ‘ tioned, against the will, mind, or pleasure of the  
 ‘ owners, occupiers, or possessioners of the same (as  
 ‘ well by day as by night) is prohibited and made penal,  
 ‘ in such manner and form as in and by the said statute  
 ‘ it doth and may more plainly appear; and yet by a  
 ‘ proviso in the said statute contained, it is enacted,  
 ‘ That the said act, nor any thing therein contained,  
 ‘ should extend to any offence or offences, concerning  
 ‘ the hunting, chasing, or killing of deer or conies,  
 ‘ which should be done or committed in the day-time,  
 ‘ but only to such offences as should be then after done  
 ‘ or committed in the night-time only; any thing in  
 ‘ the said act contained to the contrary notwithstanding.

‘ II. For the explanation of which doubt and ques-  
 ‘ tion, and for that it is found by experience, that ma-  
 ‘ lefactors of that kind have been much encouraged to



A. D. 1609. ‘ chase, hunt, kill, and destroy deer in the day-time by  
 ‘ colour of the said proviso, whereby many deer, as  
 ‘ well in the parks of our sovereign lord the king, as of  
 ‘ many his highness loving subjects, have been and are  
 ‘ still like to be unlawfully and riotously chased,  
 ‘ hunted, and destroyed, by many idle, loose, and dis-  
 ‘ orderly persons :’ be it therefore enacted by the au-  
 thority of this present parliament, That from and after  
 the Feast of St. James the Apostle next ensuing, so  
 much of the said proviso in the said statute contained,  
 as concerneth the hunting, chasing out, or killing of  
 deer only, shall be repealed, frustrated, and made void ;  
 any thing in the said proviso of the said act contained  
 to the contrary thereof in any wise notwithstanding.

*A repeal of so much of a proviso contained in the statute of 3 Jac. 1. c. 13. as concerned the hunting of deer. Burn, v. 1. 475. and 487.*

‘ III. And whereas it was by the said former statute,  
 ‘ amongst other things, enacted, That if any person  
 ‘ or persons did or should wrongfully or unlawfully  
 ‘ hunt, chase, or drive out, or take, kill, or slay any  
 ‘ deer within any park or other place in the said statute  
 ‘ mentioned, against the will, mind, or pleasure of the  
 ‘ owners, occupiers, or possessioners of the same, that  
 ‘ then every such person so offending should satisfy and  
 ‘ pay unto the party grieved his treble damages in such  
 ‘ manner and form as in the said statute is mentioned :  
 ‘ by reason of the uncertainty whereof, few or no of-  
 ‘ fenders have been discouraged in their said huntings  
 ‘ drivings, chasings-out, taking, killing, or slaying of  
 ‘ deer.’

IV. For remedy whereof, be it further by the autho-  
 rity of this present parliament enacted, That if any  
 person or persons, from and after the Feast of St. James  
 the Apostle next coming after the end of this present  
 session of parliament, shall willingly commit any the  
 offences in the said statute mentioned, concerning the  
 unlawful chasing out, hunting, driving, taking, killing,  
 or slaying of deer in any park or inclosed ground, which

now is or hereafter shall be made or used for deer, A. D. 1609.  
 against the will, mind, or pleasure of the owners, occupiers, possessioners, or keepers of the same; that then all and every such person and persons so offending shall for every such offence pay and satisfy unto the party grieved the sum of ten pounds of current money of England, or else treble damages and cost, at the election of the party grieved; the same to be recovered in such manner and form as in and by the said statute is limited and appointed for the recovery, taxing, or assessing of the said treble damages; any thing in the said statute or in this present act contained to the contrary notwithstanding.

V. This law to continue unto the end of the first session of the next parliament. (3 Car. 1. c. 4. continued <sup>Continuance of this act.</sup> unto the end of the first session of the next parliament, and farther continued by 16 Car. 1. c. 4.)

16 CAR. 1. C. 16. A. D. 1640.

A. D. 1640.

AN ACT FOR THE CERTAINTY OF FORESTS, AND OF THE MEETS, MEERS, LIMITS, AND BOUNDS OF THE FORESTS.

‘ Whereas by act of parliament made in the first <sup>1 Ed. 3. st. 3.</sup> year of the reign of the late King Edward the Third, <sup>c. 1.</sup>  
 ‘ it was ordained, That the old perambulation of the  
 ‘ forest in the time of King Edward the First should  
 ‘ be thenceforth holden in like form as it was then ridden  
 ‘ and bounded, and in such places where it was not  
 ‘ bounded, the king would that it should be bounded by  
 ‘ good men and lawful :

‘ II. And whereas for many ages past certain meets,  
 ‘ meers, limits, and bounds of the forests have been  
 ‘ commonly known and observed in the several counties  
 ‘ wherein the said forests lie :

A. D. 1640.

‘ III. And whereas of late divers presentments have  
 ‘ been made, and some judgments given, whereby the  
 ‘ meets, meers, limits, and bounds of some of the said  
 ‘ forests have been variously extended, or pretended to  
 ‘ extend, beyond some of the said meets, meers, limits,  
 ‘ and bounds, so commonly known, and formerly ob-  
 ‘ served, to the great grievance and vexation of many  
 ‘ persons having lands adjoining to the said meets,  
 ‘ meers, limits, and bounds, so commonly known, and  
 ‘ formerly observed : And whereas of late time some  
 ‘ endeavours or pretences have been to set on foot fo-  
 ‘ rests in some parts of this realm, and the dominion of  
 ‘ Wales, where in truth none have been or ought to be,  
 ‘ or at least have not been used of long time :’ for re-  
 medy whereof, may it please your most excellent ma-  
 jesty, That it be declared and enacted by authority of  
 parliament :

§ H. 3. st. 2.  
 What shall  
 be the meets  
 and bounds  
 of forests.

IV. And be it declared and enacted by the King’s  
 most excellent majesty, and the lords and commons in  
 this present parliament assembled, and by the authority  
 of the same, That from henceforth the meets, meers,  
 limits, and bounds, of all and every the forests respec-  
 tively, shall be to all intents and purposes taken, ad-  
 judged, and deemed to extend no further respectively  
 than the meets, meers, limits, and bounds which, in  
 the several counties respectively wherein the said fo-  
 rests do lie, were commonly known, reputed, used, or  
 taken to be the meets, meers, limits, and bounds of the  
 said forests respectively, in the twentieth year of the  
 reign of our late sovereign lord King James, and not be-  
 yond in any wise ; any perambulation or perambula-  
 tions, presentments, extents, surveys, judgments, re-  
 cords, decrees, or other matter or thing whatsoever, to  
 the contrary notwithstanding : and that all and every  
 the presentments since the said twentieth year made,  
 and all and every other presentment and presentments,

Present-  
 ments con-  
 trary here-  
 unto shall be  
 void.



and all and every judgment and award upon, or by reason or pretext of, any such presentment or presentments, and all and every perambulation and perambulations, surveys, extents, and other act and acts, at any time heretofore had or made, by which the meets, meers, limits, or bounds of the said forests, or any of them, are, or are pretended to be, further extended than as aforesaid; and also all and every presentment of any person or persons at any justice seat, swainmote, or court of attachments, for or by reason or by colour of any act or acts whatsoever done or committed in any place without or beyond the said meets, meers, limits, or bounds respectively, so commonly known, reputed, used, or taken as aforesaid, and all and every fine and fines, and amercement and amerciements, upon, by reason or colour of any such presentment or presentments, shall from henceforth be adjudged, deemed, and taken to be utterly void, and of no force or effect; any law, statute, record, or pretence whatsoever, to the contrary notwithstanding.

V. And be it further enacted by the authority aforesaid, That no place or places within this realm of England or dominion of Wales, where no such justice-seat, swainmote, or court of attachment, have been held or kept, or where no verderers have been chosen, or regard made, within the space of sixty years next before the first year of his majesty's reign that now is, shall be at any time hereafter judged, deemed, or taken to be forest, or within the bounds or meets of the forests; but the same shall be from thenceforth for ever hereafter disafforested and freed, and exempted from the forest laws; any justice-seat, swainmote, or court of attachment, held or kept within or for any such place or places, at any time or times since the beginning of his majesty's said reign, or any presentment, enquiry, act, or thing, heretofore made, or hereafter to be made or done, to the contrary notwithstanding.

A. D. 1640.

No place  
where no  
justice-seat,  
swainmote,  
court of at-  
tachments,  
&c. hath  
been within  
sixty years,  
shall be ac-  
counted fo-  
rest.



A. D. 1640.

For ascer-  
taining of  
meets, &c.  
commissions  
shall be is-  
sued.

VI. Provided also, and be it further enacted by the authority aforesaid, That for the better putting into certainty all and every the meets, meers, bounds, and limits of all and every the forest, as aforesaid, the lord chancellor, or lord-keeper of the great seal of England, for the time being, shall by virtue of this act, upon request of any of the peers of this kingdom, or of the knights and burgesses of the parliament, or any of them, grant several commissions under the great seal of England, to commissioners to be nominated respectively by the said peers, knights, and burgesses, or any of them, to enquire of and find out, by inquests of good and lawful men upon oath, and by the oaths of witnesses to be produced at the said inquests, and by all other lawful means, all and every the meers, meets, bounds, and limits of the forests respectively, which were commonly known to be their meers, meets, bounds and limits respectively, in the said twentieth year of the reign of our late sovereign lord King James, and to return the inquests so taken into the court of chancery ; and that all and every the sheriffs and bailiffs, of and in every county wherein any such inquests shall be so to be taken, and all and every the verderers, foresters, rangers, and other officers of the forests respectively where any such officers be, shall be assistant and attendant to the executions of the said commissions, according as by virtue of the said commissions respectively they shall be commanded ; and where no such officers are, or where such officers be, if they or any of them shall refuse or neglect such assistance and attendance as aforesaid, then the said commissioners shall and may proceed without them in the execution of the said commissions.

Forests shall  
not extend  
beyond the  
meets, &c. so  
returned.

VII. And be it further enacted by the authority aforesaid, That the forests whereof the meets, meers, limits, and bounds shall be so returned and certified by

virtue of any the said commission as aforesaid, A. D. 1640. from thenceforth shall not extend nor be extended, nor be deemed; adjudged, or taken to extend, any further in any wise than the meets, meers, limits, and bounds that shall be so returned and certified: and that all the places and territories that shall be without the meets, meers, limits, and bounds so returned and certified, shall be, and are hereby declared to be, from thenceforth, free to all intents and purposes, as if the same had never been forest, or so reputed; any act or acts, matter or thing whatsoever to the contrary thereof notwithstanding.

VIII. Provided, and be it further enacted by the authority aforesaid, That all and every the grounds, territories, or places which have been or are disafforested, or mentioned to be disafforested in or by any letters patents, charters, or otherwise, since the said twentieth year of the reign of our said late sovereign lord King James, shall be excluded and left out of the meets, meers, limits, and bounds of the forests which are to be enquired of, returned, and certified by virtue of the said commissions, or any of them respectively, and shall be and hereby are declared and enacted to be utterly disafforested, free, and exempt, to all intents and purposes, as if the same had never been at all forest, or so reputed; any thing in this present act contained, or any other act, matter, or thing whatsoever to the contrary in any wise notwithstanding.

Grounds disafforested shall be excluded.  
13 Vin. Ab. page 425.

IX. Provided nevertheless, and be it enacted, That the tenants, owners and occupiers, and every of them, of lands and tenements which shall be excluded and left out of the meets, meers, limits or bounds of the forests to be returned and certified by virtue of any of the said commissions, shall or may use and enjoy such common, and other profits and easements, within the forest, as anciently or accustomably they have used and enjoyed;

Tenants, owners, &c. of lands excluded shall enjoy their ancient commons, &c.  
33 Ed. 1. st. 5.

A. D. 1640. any thing in this present act contained, or any act or ordinance made in the three and thirtieth year of King Edward the First, or any custom or law of the forest, or any other matter or thing to the contrary thereof notwithstanding.

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A. D. 1661.

13 CAR. 2. C. 10. A. D. 1661.

AN ACT TO PREVENT THE UNLAWFUL COURSING,  
HUNTING, OR KILLING OF DEER.

For the better preventing of the unlawful coursing, hunting, taking, or killing of deer, by many idle, loose, and disorderly persons, be it enacted by the king's most excellent majesty, and by the advice and consent of the lords and commons in parliament assembled, and by the authority of the same, That if any person or persons shall, from and after the first day of August next, unlawfully course, kill, hurt, or take away any red or fallow deer in any forest, chase, purlieu, paddock, wood, park, or other ground where deer are or have been usually kept within the realm of England or dominion of Wales, without the consent of the owner or person chiefly intrusted with the custody thereof, or shall be aiding or assisting therein, and shall be convicted thereof by the confession of the party, and by the oath of one or more credible witnesses, before one or more justices of the peace, (who are hereby impowered to administer an oath to that purpose,) such person being prosecuted for such offence within six months after such offence done; that then every person so offending, shall forfeit for  
 3 *Mod.* 114.  
 2 *Show.* 490.  
 The penalty. every such offence the sum of twenty pounds; to be levied by way of distress upon the goods and chattels of every such offender, by warrant under the justice's hand before whom such conviction shall be made; the one moiety of the said twenty pounds to be given to the in-



former, and the other moiety to the owner of the deer ; A. D. 1661.  
 and for want of sufficient distress, the offender shall be  
 committed to the house of correction for six months, and  
 there to be put to hard labour ; or to the common gaol  
 for one whole year, without bail or mainprise, at the  
 discretion of the justices of the peace before whom such  
 conviction shall be, (and not to be discharged from  
 thence till he or they have given sufficient sureties for  
 their good behaviour for one whole year next ensuing  
 after his or their enlargement :) Provided, that where *Raym. 458.*  
 any offender shall be punished by force of this act, that *3 & 4 W. &*  
 he shall not be prosecuted, nor incur the penalty of any *M. c. 10.*  
 other law or statute for the same offence. *19 H. 7. c. 15, 28.*  
*9 Geo. 1. c. 22.*  
*10 Geo. 2. c. 32.*  
*c. 11. 3 Jac. 1. c. 13. 7 Jac. 1. c. 13.*

22 AND 23 CAR. 2. C. 25. A. D. 1670. *Rep.* A. D. 1670.

AN ACT FOR THE BETTER PRESERVATION OF THE  
 GAME, AND FOR SECURING WARRENS NOT INCLOSED,  
 AND THE SEVERAL FISHINGS OF THIS REALM.

‘ Whereas divers disorderly persons, laying aside  
 ‘ their lawful trades and employments, do betake them-  
 ‘ selves to the stealing, taking, and killing of conies,  
 ‘ hares, pheasants, partridges, and other game, in-  
 ‘ tended to be preserved by former laws, with guns,  
 ‘ dogs, tramels, lowbels, hays, and other nets, snares,  
 ‘ hare-pipes, and other engines, to the great damage of  
 ‘ this realm, and prejudice of noblemen, gentlemen, and  
 ‘ lords of manors, and others, owners of warrens :’

II. For remedy thereof, be it enacted by the king’s *Who may*  
 most excellent majesty, by and with the advice and con- *appoint*  
 sent of the lords spiritual and temporal, and the com- *game-*  
 mons, in this present parliament assembled, and by the *keepers.*  
 authority of the same, That all lords of manors, or other  
 royalties, (not under the degree of an esquire,) may



A.D. 1670. from henceforth, by writing under their hands and seals, authorize one or more game-keeper or game-keepers within their respective manors or royalties, who being thereunto so authorized, may take and seize all such guns, bows, greyhounds, setting-dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbels, hays, or other nets, hare-pipes, snares, or other engines, for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of such respective manors shall be used by any person or persons who by this act are prohibited to keep or use the same: And moreover, that the said game-keeper or game-keepers, or any other person or persons being thereunto authorized by warrant under the hand and seal of any justice of the peace of the same county, division, or place, may in the day-time search the houses, out-houses, or other places of any such person or persons by this act prohibited to keep or use the same, as upon good ground shall be suspected to have or keep in his or their custody any guns, bows, greyhounds, setting-dogs, ferrets, coney-dogs, or other dogs, to destroy hares or conies, hays, tramels, or other nets, lowbels, hare-pipes, snares, or other engines aforesaid, and the same and every or any of them to seize, detain and keep, to and for the use of the lord of the manor or royalty where the same shall be so found or taken, or otherwise to cut in pieces or destroy, as things by this act prohibited to be kept by persons of their degree.

What such game-keepers may seize.

Power to search houses.

What persons are prohibited the keeping of guns, bows, dogs, &c.  
*5 Mod. 307.*  
*1 Salk. 212.*

III. And it is hereby enacted and declared, That all and every person and persons not having lands and tene-ments, or some other estate of inheritance, in his own or his wife's right, of the clear yearly value of one hundred pounds per annum, or for term of life, or having lease or leases of ninety-nine years, or for any longer term, of the clear yearly value of one hundred and fifty pounds, other than the son and heir apparent of an

esquire, or other person of higher degree, and the A. D. 1670 owners and keepers of forests, parks, chases, or warrens, being stocked with deer or conies for their necessary use, in respect of the said forests, parks, chases, or warrens, are hereby declared to be persons by the laws of this realm not allowed to have or keep for themselves, or any other person or persons, any guns, bows, greyhounds, setting-dogs, ferrets, coney-dogs, lurchers, hays, nets, lowbels, hare-pipes, gins, snares, or other engines aforesaid; but shall be and are hereby prohibited to have, keep, or use the same.

‘ IV. And forasmuch as divers warrens and grounds No person shall kill conies in a warren not inclosed. not inclosed, are used for the breeding and keeping of conies, in several parts of this kingdom, and that sundry dissolute and disorderly persons have been much encouraged to kill and destroy the conies in such warrens and grounds not inclosed in the night-time, for that the same is not prohibited or punishable by the statutes in that behalf made and provided, which extend only to the stealing and killing of conies in warrens or grounds inclosed:’ for remedy thereof, be it enacted and declared, That if any person or persons shall at any time enter wrongfully into any warren or ground lawfully used or kept for the breeding or keeping of conies, (although the same be not inclosed,) and there shall take, chase, or kill any conies, against the will of the owner or occupiers thereof, not having lawful title or authority so to do, and shall be thereof lawfully convicted in manner hereafter following, the parties so offending shall yield to the party grieved treble Forfeiture. damages and costs, and suffer imprisonment by the space of three months, and after, till they shall find sureties for their good abearing.

‘ V. And forasmuch as divers idle and disorderly No person shall in the night kill any conies persons living near unto warrens, have of late time used to kill and take the conies upon the borders of

A. D. 1670. ‘ the same, and, under colour thereof, do oft-time enter  
 on the borders of any ‘ into the said warrens, and there take and kill conies in  
 warren, except the ‘ the night-time, when they cannot easily be disco-  
 owner of the ‘ vered ;’ it is further provided and enacted, That no  
 ground. person or persons shall at any time hereafter kill or take

in the night-time any conies upon the borders of any  
 warrens, or other grounds lawfully used for the breeding  
 or keeping of conies, excepting only such person or  
 persons as shall be owner of the soil, or lawful occu-  
 pier or possessor of the ground, or any person or per-  
 sons employed by him, her, or them, whereupon such  
 conies shall be so killed or taken, upon pain that every  
 person so offending, and being thereof lawfully convicted  
 in manner hereafter following, shall give the party or  
 parties injured such recompence or satisfaction for his or  
 their damages, and within such time as shall be appoint-  
 ed by the justice before whom such offender shall be  
 convicted, and over and above pay down presently unto  
 the overseers, for the use of the poor of the parish where  
 such offence shall be committed, such sum of money, not  
 exceeding ten shillings, as the said justice shall think  
 meet: and if such offender or offenders do not make recom-  
 pence or satisfaction to the said party or parties injured,  
 and also pay the said sum to the poor in manner and  
 form aforesaid, then the said justice shall commit the  
 said offender or offenders to the house of correction for  
 such time as the said justice shall think fit, not exceed-  
 ing one month.

Imprison-  
 ment.

No person  
 shall kill, or  
 set snares for  
 hares, &c.

‘ VI. And whereas divers idle and disorderly persons  
 ‘ have of late time taken up a practice to take and kill  
 ‘ hares and conies with snares, hare-pipes, and other  
 ‘ engines, in or near woods, warrens, or other places ;  
 it is hereby further enacted and declared by the autho-  
 rity aforesaid, That if any person or persons, from and  
 after the first day of May which shall be in the year  
 of our Lord God one thousand six hundred seventy and

one, shall be found or apprehended setting or using any A. D. 1670. snares, hare-pipes, or other like engines, and shall be thereof convicted in manner following; the person or persons so offending shall be liable to the penalties in the immediate foregoing clause of this act in manner as aforesaid. The penalty.

‘ VII. And whereas divers idle, disorderly, and mean No person persons do from time to time betake themselves to the shall fish in stealing, taking, and killing of fish out of ponds, the pond or pools, motes, stews, and other several waters and rivers, any person to the great damage of the owners thereof:’ be it there- without his fore further enacted by the authority aforesaid, That if consent, any person or persons, from and after the first day of with nets or May which shall be in the year of our Lord God one other en- thousand six hundred seventy and one, shall at any gines. time use any casting-net, thief-net, drag-net, trammel, see 2 Bur. shove-net, or other net whatsoever, or any angle, hair, 682. noose, troll, or spear, or shall lay any wears, pots, nets, fish-hooks, or other engines, or shall take any fish by any means or device whatsoever, in any river, stew, pond, mote, or other water as aforesaid, or shall be aiding or assisting thereunto, without the licence or consent of the lord or owner of the said water, and be thereof, or of any other the offence or offences mentioned in this act, convict by confession of the offender, or by oath of one sufficient witness within one month after the offence committed, before any justice of the peace of such county, riding, division, or place wherein such offence as aforesaid shall be committed, which oath the said justice of peace is hereby impowered to administer: every such offender or offenders in stealing, taking, or killing fish, shall, for every such offence, give to the party or parties injured, such recompence or satisfaction for his The penalty. or their damages, and within such time, as the said justice shall appoint, not exceeding treble damages; and



A. D. 1670. over and above pay down presently unto the overseers for the use of the poor where the said offence shall be committed, such sum of money, not exceeding ten shillings, as the said justice shall think meet : and in default of payment as aforesaid, the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of such justice before whom the offender shall be convicted, rendering the overplus, if any be ; and for want of distress the offender or offenders shall be committed to the house of correction for such time as the justice shall think fit, not exceeding one month ; unless the party offending shall enter into bond with one competent surety or sureties to the party injured, not exceeding the sum of ten pounds, never to offend in like manner.

Justice of the  
peace may  
cut the nets,  
&c.

VIII. And be it further enacted, That it shall and may be lawful for every justice of peace before whom such offender as aforesaid shall be convict, to take, cut in pieces, and destroy all and every such angles, spears, hairs, nooses, trolls, wears, pots, fish-hooks, nets, or other engines whatsoever, wherewith such offender as aforesaid shall be taken or apprehended.

The party  
grieved may  
appeal to the  
quarter ses-  
sions.

IX. Provided always, and be it further enacted by the authority aforesaid, That if any person or persons shall find him or themselves aggrieved by any judgment which shall happen to be given by any justice of the peace by virtue of this act, it shall and may be lawful for such person or persons so aggrieved, to appeal unto the justices of peace in their general quarter sessions which shall happen to be held next after such judgment given : who or the greater number of them are hereby authorized and impowered to give such relief and make such order therein, as shall be agreeable to the tenor of this act ; and such judgment, order, or determination, as by the said justices shall be made upon the said ap-

peal, shall be final to all intents and purposes whatsoever, if no title to any land, royalty, or fishery, be therein concerned. A. D. 1670.

X. Provided always, and be it further enacted, That As saving of neither this act, nor any thing therein contained, shall of all royal- extend, or be construed to extend, to the taking away ties and pre- or abridging of any royalty or prerogative royal of his rogatives to majesty, nor to abridge, change, or alter any part of the his majesty, forest laws and forest laws of this realm; but all and every such laws, rights, powers, royalties, and prerogatives royal, shall remain and be in as full and ample force and virtue, as the same ought to have been in if this act had not been made; any thing herein-before contained to the contrary notwithstanding.

30 CAR. 2. C. 9. A. D. 1678.

A. D. 1678.

AN ACT FOR PRESERVATION OF FISHING IN THE  
RIVER OF SEVERN.

I. For preservation of the fishing in the river of Severn, in the counties of Worcester, Salop, and Gloucester, and for the preventing of several abuses lately practised by divers persons fishing in the said river, tending to the destruction of the common piscary, especially of the spawn, fry, and young breed of fish in the said river; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons whatsoever, from and after the first day of August next, shall in the said river of Severn fish with any net, device, or engine, or make use of any net, wear, spear, or other engine or device whatsoever, whereby any salmon, trout, pike, or

A. D. 1678. barbel, under the length appointed by the statute made in the first year of the reign of our late sovereign lady Queen Elizabeth, shall be taken or killed, or if any person or persons whatsoever shall, from and after the said first day of August, within the said river fish with any net whatsoever, for the taking of salmon, salmon-mart, salmon-peal, pike, carp, trout, barbel, chub, or grayling, the mesh whereof shall be under two inches and a half square by the standard, and not extended, that is to say, two inches and a half square from knot to knot, allowing to each mesh four knots, or which shall be above twenty yards in length, and two yards in breadth or depth, or above fifty yards in length, and six yards in breadth or depth in the wing of the net, in any part of the said river of Severn, from Ripple-Lockstake on the edge of the said county of Worcester, to Gloucester-bridge, which is upon the said river of Severn, or above sixty yards in length, in any part of the river of Severn below Gloucester-bridge, and six yards in breadth or depth in the wing of the net, or shall fish with more than one of those nets at any one time, that is to say with two or more fixed together, or with any drag-net, trammel, or any other net fixed to the same, or shall use any net, engine, instrument, or device whatsoever, for the taking of the fry of eels commonly called *elvers*, every such person offending, as aforesaid, shall

**The penalty.** forfeit the sum of five pounds for every time that he or they shall fish with any of the said unlawful nets, instruments, devices or engines, and also the fish so taken or killed, together with the said unlawful nets, engines, devices and instruments, whatsoever they be, wherewith or whereby such offences shall be made, committed, or done; and also shall forfeit the like sum of five pounds for every time that he or they shall water any manner of hemp or flax in the said river.

II. And be it further enacted by the authority afore-

said, That if any person or persons shall, during the A. D. 1678.  
time of spawning of fish (to wit) between the first day of  
March and the last day of May, draw or lay any kind of  
nets, instruments, or engines, in the fords, streams, or  
shallows of the said river, where fish doth usually spawn,  
or shall do or commit, or cause to be done or committed,  
any act whatsoever, whereby the spawn or small fry of  
fish, shall be taken, killed, or destroyed, every such  
person or persons so offending shall forfeit and lose the  
sum of forty shillings for every offence, and the nets,  
instruments, or other engines so used, placed, or em-  
ployed for the purposes aforesaid.

The penalty  
for destroy-  
ing the  
spawn or  
fry of fish.

III. And to the intent that a perfect execution may  
be had of this present act, be it enacted by the authority  
aforesaid, That the justices of the peace within the said  
respective counties of Worcester, Salop, and Gloucester,  
wherein they shall be justices, shall be and are  
hereby appointed conservators of the said river, and to  
make one or more under conservators within their re-  
spective limits; and that the said justices of the peace  
shall issue forth their warrants under the hands and  
seals of any two of them, directed to such under con-  
servator or conservators, or to any constable, tything-  
man, or headborough, where any such offence shall be  
committed, upon their own knowledge, or information  
to them given, to search in the day-time in all sus-  
pected houses and places for all such nets, instruments,  
devices, and other engines, and the same to seize and  
bring before the said justices, or in their open quar-  
ters, sessions, that the said unlawful nets, instruments,  
devices, and engines may upon the view thereof be burnt,  
destroyed, or made useless.

Conservators  
of the river.

Unlawful in-  
struments  
how to be  
destroyed.

IV. Provided always, That no person or persons of-  
fending, as aforesaid, shall be punished for any of the  
offences aforesaid, unless by information or indictment  
before his majesty's justices of assize and *nisi prius*,

The said of-  
fences how to  
be punished.



A. D. 1676. *oyer and terminer*, and general gaol delivery, or in the general sessions of the peace to be holden for the said counties respectively, wherein the same shall be committed, and upon conviction of any person or persons for any of the offences aforesaid, the said respective courts shall award execution for the said forfeitures; the one moiety thereof to the use and benefit of the poor of the parish where the said offence shall be committed, and the other moiety to such person or persons as shall prosecute for the same, by *fieri facias*, or *capias ad satisfaciendum*, as the king's majesty's justices at Westminster may and use to do.

The forfeitures how to be disposed.

The jurisdiction of lords of leets and franchises saved.

A saving of the king's rights.

V. Provided also, That this present act, or any thing herein contained, do not extend to abridge the jurisdiction of the lords of leets or franchises, within their respective leets and franchises, but that they may proceed to enquire, hear, and determine, any the offences aforesaid, within their respective leets and franchises, as formerly they have lawfully used to do.

VI. Saving always unto our sovereign lord the king, his heirs and successors, and to all and every person and persons whatsoever, all rights, titles, and interests whatsoever, that they either have or may lawfully claim in the said river, as if this act had never been made.

A. D. 1691.

3 WILLIAM AND MARY, c. 10. A. D. 1691.

AN ACT FOR THE MORE EFFECTUAL DISCOVERY AND  
PUNISHMENT OF DEER-STEALERS.

13 R. 2. st. 1.  
c. 13.

19 H. 7. c. 11.  
5 Ed. c. 21.

3 Jac. 1. c. 13.

7 Jac. 1. c. 13.

13 Car. 2.

st. 1. c. 10.

22 & 23 Car. 2.  
c. 25.

Whereas notwithstanding the many good laws before this time made, and still in force, which do prohibit unlawful coursing, hunting, or killing of deer: yet in as much as the penalties thereby provided are found by daily experience not to be sufficient to deter divers lewd, sturdy, and disorderly persons, who con-

‘ federate together in great numbers, making amongst A. D. 1641.  
 ‘ themselves as it were a brotherhood and fraternity,  
 ‘ whereby if any of them shall be discovered and con-  
 ‘ victed, which seldom happens, because of their great  
 ‘ force and clandestine manner of combination, they by  
 ‘ a common contribution (for the most part) advance  
 ‘ and pay, for such persons so apprehended, the pecu-  
 ‘ niary penalties (which are but small) inflicted on such  
 ‘ offenders, by reason whereof the other confederates  
 ‘ escape discovery and condign punishment :’ therefore,  
 for the more effectual discovery and punishment of such  
 persons,

II. Be it enacted by the king’s and queen’s most ex-  
 cellent majesties, by and with the advice and consent of  
 the lords spiritual and temporal, and commons, in par-  
 liament assembled, and by the authority of the same,  
 That if any person or persons shall, from and after the  
 twenty-fifth day of March in the year of our lord one  
 thousand six hundred ninety-two, unlawfully course,  
 hunt, take in toys, kill, wound, or take away any red  
 or fallow deer in any forest, chase, purlieu, paddock,  
 wood, park, or other ground inclosed, where deer are,  
 have, or shall be usually kept, within the realm of Eng-  
 land, or dominion of Wales, without the consent of the  
 owner or person chiefly intrusted with the custody there-  
 of, or shall be aiding or assisting therein, and shall be  
 convicted thereof by the confession of the party, or by  
 the oath of one or more credible witness or witnesses,  
 before one or more justices of the peace of the same  
 county wherein the offence shall be committed, or the  
 party offending apprehended (which oath the said jus-  
 tice or justices hereby are impowered to administer), and  
 such persons being prosecuted for such offence within  
 twelve months after such offence done ; that then every  
 such person so offending by unlawful coursing or hunt-  
 ing only, when no deer is taken, wounded or killed, shall

Person con-  
 vict of deer  
 stealing, if  
 afterwards  
 hunt deer,  
 forfeits 20*l*.

By 9 Geo. 1.  
 c. 22. s. 13.  
 prosecution  
 may be with-  
 in three  
 years.

A. D. 1691. forfeit for every such offence the sum of twenty pound:  
 For each deer and in case any deer shall by such person or persons be  
 wounded 30*l.* wounded, taken in toyls, or killed, that for each deer so  
 wounded, killed, or taken, such person or persons shall  
 respectively forfeit and pay the sum of thirty pounds, to  
 be levied by way of distress upon the goods and chattels  
 of every such offender, by warrant under the justice or  
 justices hand before whom such conviction or convic-  
 tions shall be made; the one third part of such forfei-  
 tures to be given to the informer or informers, the other  
 part to the use of the poor of the parish where the of-  
 fence shall be committed, and the other third part to  
 the owner of such deer; and for want of sufficient dis-  
 tress, that then such persons shall suffer imprisonment  
 by the space of one whole year, without bail or main-  
 prize, and shall be set in the pillory by the space of one  
 hour, on some market-day in the next adjoining town to  
 the place where such offence was committed, by the chief  
 officer or officers of such market-town, or by his or their  
 under-officer or officers.

Penalty le-  
 vied by dis-  
 tress.

Persons to be  
 imprisoned  
 and pilloried  
 for want of  
 distress.

Constables  
 may search  
 suspicious  
 houses, &c.  
 1 *Salk.* 383.

III. And be it further enacted, That every constable,  
 headborough, or tythingman, (being thereto authorized  
 by the warrant of one or more justices of peace, under  
 his or their hands and seals) shall and may have full  
 power and authority (and hereby is required) to enter  
 into and search (in such manner, and with such power,  
 as in case where goods are stolen or suspected to be  
 stolen) the house or houses, out-houses or other places  
 belonging to such houses of suspected persons; and in  
 case any venison, or skin of any deer, or toyls, shall  
 there be found, such officer shall apprehend such of-  
 fender, and carry him before some justice of the peace  
 of the same county; and if such person do not give a  
 good account how he came by such venison, skins, or  
 toyls, such as shall satisfy the said justice, or else shall  
 not, in some convenient time to be set him by the said jus-

ice, produce the party of whom he bought such venison, skins, or toyls, or some other credible witness to lepose upon oath such sale of the said venison or skins, hat then such person not giving such good account, nor producing any such witness as aforesaid, shall be convicted by the said justice of such offence, who, on such conviction, shall be subject unto the forfeitures and penalties hereby inflicted for the killing of any one deer, in the same manner as if thereof convicted as aforesaid.

IV. And to the end that no persons convicted of any Constable of the offences as aforesaid, may escape punishment by <sup>may detain</sup> their flight or other removal after such conviction, be it <sup>the person</sup> further enacted by and with the authority aforesaid, <sup>till distress</sup> That it shall and may be lawful for, and hereby power <sup>returned.</sup> and authority is given (after conviction as aforesaid) to the constable or other officer, or person or persons prosecuting, to detain in custody such offender or offenders (in case he or they shall not presently pay the monies due by the said conviction) during such reasonable time as a return may be conveniently had and made to the warrant for the distress upon such conviction, so as such detainer do not exceed two days.

V. And to the end all owners of deer in any inclosed <sup>persons hav-</sup> ground may be indemnified in the just defence of such <sup>ing deer in</sup> their right, be it enacted, That any owner of such deer, <sup>inclosed</sup> or any person or persons acting by, from, and under <sup>ground may</sup> him, shall and may oppose and resist such offenders in <sup>oppose of-</sup> the same manner, and be equally indemnified for so doing, as if such fact had been committed within any ancient chase or park whatsoever.

‘ VI. And whereas divers offenders duly convicted, do <sup>No certiorari</sup> commonly procure writs of certiorari to remove such <sup>except the</sup> convictions into superior courts at Westminster, in <sup>offender give</sup> hopes thereby to discourage and weary out such per- <sup>security to</sup> sons injured by great delays, expences, and incertain- <sup>pay the pro-</sup> costs, &c.



*A. D. 1800.* *§ ties:* be it therefore enacted, That no certiorari shall be allowed to remove any conviction made, or other proceeding of, for, or concerning any matter or thing in this act, unless the party or parties against whom such conviction shall be made, shall, before the allowance of such certiorari, become bounden to the person or persons prosecuting in the sum of fifty pounds, with such sufficient sureties as the justice or justices of the peace, before whom such offender was convicted, shall think fit, with condition to pay unto the said prosecutors, within one month after such conviction confirmed, or a procedendo granted, their full costs and damages, to be ascertained upon their oaths; and that in default thereof it shall be lawful for the said justice and justices, and others, to proceed to the due execution of such conviction, in such manner as if no certiorari had been awarded.

*Persons punished by this act, punishable no other way.* VII. Provided, That where any offender shall be punished by force of this act, that he shall not be prosecuted, nor incur the penalty of any other law or statute, for the same offence.

*General issue.* VIII. Provided always, That if any person or persons whatsoever shall be sued or prosecuted for or by reason of any matter or thing which he or they shall do in pursuance of this act, it shall and may be lawful to and for the person or persons so sued or prosecuted to plead the general issue, and give the special matter in evidence.

*Persons convicted before a justice for pulling down the pales of any park, imprisoned for three months.* IX. Provided also, and be it enacted by the authority aforesaid, That if any person or persons shall in the night-time pull down and destroy, or cause to be pulled down and destroyed, the pales or walls of any park, forest, chase, purlieu, paddock, wood, or other ground inclosed, where any red or fallow deer shall be then kept, that such person or persons so offending, being thereof convicted by the oath of one or more

credible witness or witnesses, before one or more justice A. D. 1691.  
 or justices of the peace of the same county wherein the <sup>crs are sub-</sup>  
 offence shall be committed, shall, by warrant from such <sup>ject to the</sup>  
 justice or justices as aforesaid, suffer imprisonment for <sup>penalty in-</sup>  
 three months, without bail or mainprize. <sup>dicted by this</sup>  
<sup>act for killing</sup>  
<sup>one deer.</sup>

By 5 *Geo. 1. c. 28.* Deer-stealers are to be transported. Farther provisions re-  
 lating hereto 4 & 5 *W. & M. c. 23.*—5 *Ann. c. 14.* 9 *Ann. c. 23.* 3 *Geo. 1. c. 11.*  
 8 *Geo. 1. c. 19.* 20 *Geo. 2. c. 32.* and 28 *Geo. 2. c. 12.*

4 AND 5 WILLIAM AND MARY, c. 23. *Rep* A. D. 1692.

AN ACT FOR THE MORE EASY DISCOVERY AND CON-  
 VENTION OF SUCH AS SHALL DESTROY THE GAME  
 OF THIS KINGDOM.

‘ Whereas divers good and necessary laws have been <sup>Laws against</sup>  
 ‘ heretofore made for the better preservation of the game, <sup>destroying</sup>  
 ‘ notwithstanding which laws, or for want of the due <sup>game to be</sup>  
 ‘ execution thereof, the game of this kingdom hath <sup>executed.</sup>  
 ‘ been very much destroyed by many idle persons, who  
 ‘ afterwards betake themselves to robberies, burglaries,  
 ‘ or other like offences, and neglect their lawful em-  
 ‘ ployments;’ for remedy whereof, and the more effec-  
 tual preservation of the game,

II. Be it enacted by the king’s and queen’s most ex- <sup>13 R. 2. st. 1.</sup>  
 cellent majesties, by and with the advice and consent of <sup>c. 13.</sup>  
 the lords spiritual and temporal, and commons, in this <sup>11 H. 7. c. 17.</sup>  
 present parliament assembled, and by the authority of <sup>19 H. 7. c. 11.</sup>  
 the same, That all and every law and statute now in <sup>32 H. 8 c. 8.</sup>  
 force for the better preservation of the game, and every <sup>5 Eliz. c. 21.</sup>  
 article and thing in them contained, and not herein and <sup>23 Eliz. c. 10.</sup>  
 hereby altered or repealed, shall be duly put in execu- <sup>1 Jac. 1. c. 27.</sup>  
 tion, according to the tenor of the said laws, and <sup>3 Jac. 1. c. 13.</sup>  
 under the penalties therein contained, to be raised, le- <sup>7 Jac. 1. c. 13.</sup>  
 vied, and disposed of, as in and by the said laws are <sup>13 Car. 2.</sup>  
 directed. <sup>stat. 1. c. 10.</sup>  
<sup>22 & 23 Car.</sup>  
<sup>2. c. 15 & 25.</sup>

A. D. 1622. III. And be it further enacted by the authority afore-  
 Constable by said, That for the more easy conviction of such of-  
 fenders, as by the said laws are prohibited, every con-  
 stable, headborough, and tythingman, being thereunto  
 authorized by warrant of one or more justice of the peace,  
 under his or their hands and seals, shall and may have  
 full power and authority, and is hereby required, to  
 enter into and search (in such manner, and with such  
 power, as in and by an act for the more effectual dis-  
 covery and punishment of deer-stealers, made in the  
 third and fourth years of their present majesties reign, is  
 provided, in case of venison or skin of any deer, or  
 toyl-) the house or houses, out-houses, or other places  
 belonging to such houses or suspected persons not quali-  
 fied as aforesaid; and in case any hare, partridge, pheas-  
 ant, pigeon, fish, fowl, or other game, shall (upon such  
 search or otherwise) be found, the offender shall be car-  
 ried before some justice of peace of the same county,  
 riding, or division; and if such person do not give a  
 good account how he came by such hare, partridge,  
 pheasant, pigeon, fish, fowl, or other game, such as shall  
 satisfy the said justice, or else shall not in some conve-  
 nient time, to be set by the said justice, produce the  
 party of whom he bought the same, or some other cre-  
 dible person, to depose upon oath such sale thereof, that  
 then such person not giving such good account, nor pro-  
 ducing any such witness as aforesaid, shall be convicted  
 by the said justice of such offence, and upon such con-  
 viction shall forfeit for every hare, partridge, pheasant,  
 pigeon, fish, fowl, or other game, any sum not under  
 five shillings and not exceeding the sum of twenty shil-  
 lings, to be ascertained by the said justice; one moiety  
 thereof to be paid to the informer, and the other moiety  
 to the poor of the parish where the offence was com-  
 mitted; the same to be levied by distress and sale of the  
 offender's goods, by warrant under the hand and seal of

A. D. 1622.  
 Constable by  
 warrant may  
 search & sus-  
 pected  
 houses.

8 & 4 H. and  
 M. c. 10.

It hare, &c.  
 be found, and  
 owner thereof  
 give good ac-  
 count, he  
 shall be con-  
 victed.  
*Burn*, v. 1.  
 315.

Penalty upon  
 conviction,  
 &c.

the justice before whom the offender shall be convicted, A. D. 1692  
 rendering the overplus, if any be ; and for want of dis-  
 tress, the offender or offenders shall be committed to the  
 house of correction, for any time not exceeding one  
 month, and not less than ten days, there to be whipt  
 and kept to hard labour ; and in case any person or  
 persons, not qualified by the laws of this realm so to do, <sup>Person hav-  
ing grey-  
hounds, &c.</sup>  
 shall have, keep, or use any bows, greyhounds, setting <sup>how con-  
victed, and  
punished.</sup>  
 dogs, ferrets, coney dogs, hayes, lurchers, nets, tunnels,  
 lowbels, hare pipes, snares, or any other instruments for  
 destruction of fish, fowl, or other game, and shall be  
 thereof convicted upon such evidence as aforesaid, the  
 person or persons so convicted shall forfeit and be sub-  
 ject to the same pains and penalties, as are hereby  
 directed to be inflicted upon the person or persons who  
 shall be found to have any hare, partridge, pheasant,  
 pigeon, fish, fowl, or other game, as aforesaid ; and if  
 any person or persons, so produced or charged with the  
 said offence, shall not before the same justice give such  
 evidence of his innocence as aforesaid, he shall be con-  
 victed thereof in the same manner as the person or  
 persons first charged therewith is hereby directed to be,  
 and so from person to person, until the first offender shall  
 be discovered.

IV. And to the end all keepers and game-keepers, <sup>Game-keep-  
ers may op-  
pose persons  
in the night.  
21 Ed. 1. st. 2.  
22 & 23 Car.  
2. c. 25.</sup>  
 mentioned in and duly authorized according to the act  
 made in the reign of the late King Charles the Second,  
 may be indemnified in the execution of the said office,  
 be it enacted, That all lords of manors or other royalties,  
 or any person or persons authorized by them as game-  
 keepers, shall and may, within their respective manors  
 or royalties, oppose and resist such offender in the night-  
 time, in the same manner, and be equally indemni-  
 fied for so doing, as if such fact had been committed  
 within any ancient chase, park, or warren inclosed what-  
 soever.



A. D. 1692.

Persons not  
owners of  
fisheries, may  
not keep  
nets, &c.

‘ V. And whereas divers idle, disorderly, and mean person, have and keep nets, angles, leaps, piches, and other engines, for the taking and killing of fish out of the ponds, waters, rivers, and other fisheries, to the damage of the owners thereof;’ be it therefore enacted by the authority aforesaid, That no person or persons whatsoever shall and may, at any time or times, from and after the five and twentieth day of March, which shall be in the year of our Lord one thousand six hundred ninety-three, have or keep any net, angle, leap, piche, or other engine for the taking of fish, other than the makers and sellers thereof, for their better conveniency in the sale of the same, and other than the owner and occupier of any river or fishery for the time being : and moreover, that it shall and may be lawful, not only for the owner or occupier of any river or fishery, and also for all and every other person and persons by him or them for that purpose appointed, to seize, detain, and keep, to his and their own use and uses, all and every net, angle, leap, piche, and other engine, which he or they shall find used or laid, or in the custody or possession of any person or persons whatsoever, fishing in any river or fishery whatsoever without the consent of the owner or occupier thereof, but also for any person or persons whatsoever (being thereunto authorized by warrant under the hand and seal of any justice of the peace of the same county, division, borough, town corporate, or any other place) in the day-time to search the houses, out-houses, or other places of any person or persons hereby prohibited to have or keep the same, as shall be suspected to have or keep, in his or their custody or possession, any net, angle, leap, piche, or other engine aforesaid, and the same and every or any of them to seize, detain, and keep, to his and their own use and uses, or otherwise, to cut in pieces or destroy, as things

Owner of  
fishery may  
seize nets,  
&c. used in  
his fishery,  
&c.

*Burn, v. 1.*  
495.

by this act prohibited to be kept by persons of their A. D. 1692.  
degree.

See 4 *Ann. c.*

21. 9 *Ann. c. 26.* 1 *Geo. 1. st. 2. c. 18.* 5 *Geo. 1. c. 18.* 23 *Geo. 2. c. 26. sect. 7.*  
26 *Geo. 2. c. 9.* 30 *Geo. 2. c. 21* and 30. and 33 *Geo. 2. c. 27.*

VI. Provided always, That this act, or any thing <sup>Fishermen,</sup> therein contained, shall not extend, or be construed to <sup>&c. lawfully</sup> extend, to abridge any fisherman or his apprentice or <sup>authorized,</sup> apprentices, lawfully authorized to fish in navigable rivers or waters, with lawful nets and engines; but that every of them shall and may (according to the laws and orders made, and to be made and settled, for the good order, rule, and government of such navigable rivers and waters) use the trade of fishing, as they lawfully might have done before the making of this act; any thing in this act contained to the contrary in any wise notwithstanding.

‘ VII. And whereas divers offenders duly convicted, do commonly procure writs of certiorari to remove such convictions into superior courts at Westminster, in hopes thereby to discourage and weary out such persons injured by great delays, expences, and incertainties;’ be it therefore enacted, That no certiorari <sup>No certiorari,</sup> shall be allowed to remove any conviction made, or other <sup>except security be given</sup> proceeding of, for, or concerning any matter or thing in <sup>to pay costs.</sup> this act, unless the party or parties, against whom such conviction shall be made, shall before the allowance of such certiorari become bound to the person or persons prosecuting, in the sum of fifty pounds, with such sufficient sureties as the justice or justices of the peace, before whom such offender was convicted, shall think fit, with condition to pay unto the said prosecutors (within one month after such conviction confirmed, or proceeding granted) their full costs and charges, to be ascertained upon their oaths; and that in default thereof, it shall be lawful for the said justice and justices, and others, to proceed to the due execution of such con-

A. D. 1692. viction, in such manner as if no certiorari had been awarded.

Not to be punished twice for same offence.

VIII. Provided, That where any offender shall be punished by force of this act, he shall not be prosecuted, nor incur the penalty of any other law or statute for the same offence.

General issue.

IX. Provided always, That if any action, bill, plaint, or suit shall, at any time after the said five and twentieth day of March, be commenced or brought against any person or persons whatsoever, for or by reason of any matter or thing which he or they shall do in pursuance of this act, it shall and may be lawful to and for the person or persons so sued or prosecuted to plead the general issue, and give this act or any other special matter in evidence; and if the verdict shall pass with the defendant or defendants in such action, or the plaintiff or plaintiffs become nonsuit, or suffer any discontinuance thereof, that in any such case such defendant or defendants shall have his or their treble costs, which he or they shall have sustained in defence of such action or suit, for which the said defendant or defendants shall have the like remedy, as in other cases where costs by the laws of this realm are given to the defendants.

Treble costs.

Tradesmen, &c. liable to costs, for coming on another man's ground to hunt, &c. See 2 Wils. 70.

X. And whereas great mischiefs do ensue by inferior tradesmen, apprentices, and other dissolute persons neglecting their trades and employments, who follow hunting, fishing, and other game, to the ruin of themselves, and damage of their neighbours; for remedy whereof be it enacted by the authority aforesaid, That if any such person as aforesaid shall presume to hunt, hawk, fish, or fowl, (unless in company with the master of such apprentice, duly qualified by law,) such person or persons shall be subject to the penalties of this act, and shall or may be sued and prosecuted for their wilful trespass in such their coming on

any person's land, and if found guilty thereof, the A. D. 1692.  
 plaintiff shall not only recover his damages thereby sus-  
 tained, but his full costs of suit ; any former law to the  
 contrary notwithstanding.

XI. Provided always, and be it enacted, That for <sup>Penalty upon</sup>  
 the better preserving the red and black game of grouse, <sup>burning ling,</sup>  
 commonly called heath-cocks, or heath-polts, no person <sup>&c. upon</sup> <sup>heaths.</sup>  
 whatsoever, on any mountains, hills, heaths, moors,  
 forests, chases, or other wastes, shall presume to burn,  
 between the second day of February and twenty-fourth  
 of June, any grig, ling, heath, furze, goss, or fern, upon  
 pain that the offender or offenders shall be committed to  
 the house of correction, for any time not exceeding one  
 month and not less than ten days, there to be whipt,  
 and kept to hard labour.

10 AND 11 GULIELMI 3. CAP. 24. A. D. 1699. A. D. 1699.

AN ACT FOR MAKING BILLINGSGATE A FREE MARKET  
 FOR SALE OF FISH.

‘ Whereas the public wealth, honour, and safety of <sup>13 Fdw. 1.</sup>  
 this kingdom, as well as the maintenance of trade, <sup>st. 1. c. 47.</sup>  
 ‘ and support of navigation, as in many other respects,  
 ‘ depend on the improvement and encouragement of the  
 ‘ fishery, and Billingsgate having, time out of mind,  
 ‘ been a free market for all manner of floating and salt  
 ‘ fish, as also for all manner of lobsters and shell fish ;  
 ‘ nevertheless, divers abuses, evidently destructive to  
 ‘ that trade, have been of late years practised, by rais-  
 ‘ ing new impositions and tolls, and by forestalling of  
 ‘ the markets, and other methods used by the fish-  
 ‘ mongers, in not permitting the fisherwomen and others  
 ‘ to buy the said fish of the said fishermen, to sell them  
 ‘ again in London and elsewhere, by which means the  
 ‘ fishermen are obliged to sell their fish to the said fish-



A. D. 1699. ‘mongers at their own rates, to the great discouragement of the said fishermen :’ for remedy whereof, be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the tenth day of May, which shall be in the year one thousand six hundred ninety-nine, Billingsgate market, within the said city of London, shall be every day in the week (except Sundays) a free and open market for all sorts of fish whatsoever ; and that it shall and may be lawful for any person or persons to buy or sell any sort of fish in the said market without any disturbance or molestation whatsoever.

Fishermen,  
&c. to pay  
toll.

II. And for the better encouraging the said fishery, be it further enacted by the authority aforesaid, That no fisherman or other person or persons, selling any sort of sea fish in the said market, shall, from and after the said tenth day of May one thousand six hundred ninety-nine, pay to any person or persons any other toll or duty whatsoever, for coming with his boat or vessel, or landing, standing, being or selling, in or at the said market of Billingsgate, than is herein-after mentioned, that is to say,

Vessel with  
salt fish 8d.  
per day  
groundage,  
and 20d. per  
voyage.

III. For every vessel with salt fish, for groundage eight pence per day, and twenty pence per voyage for every such vessel, and no more, in full for all duties and demands, to be disposed of and distributed as the lord mayor and court of aldermen shall yearly order and direct, according to the right of the respective persons entitled thereunto.

Lobster boat  
2d. per day  
groundage,  
and 10d. per  
voyage.

IV. For every lobster boat, for groundage per day two pence, and per voyage thirteen pence, and no more, in full for all duties and demands, to be disposed of and distributed as aforesaid.

Vessel with

V. For every vessel of fresh sea fish, for groundage

per day two pence, and per voyage thirteen pence, and no more, in full for all duties and demands, to be disposed of and distributed as aforesaid. A. D. 1609.  
fresh sea fish.

VI. For every dogger boat or smack with sea fish, for groundage per day two pence, and per voyage thirteen pence, and no more, in full for all duties and demands, to be disposed of and distributed as aforesaid. Dogger boat  
or smack.

VII. For every oyster vessel or cock, for groundage per day two pence, for metage one halfpenny per bushel, and no more, and per voyage thirteen pence, and no more, in full for all duties and demands, to be disposed of and distributed as aforesaid. Oyster vessel.

VIII. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any person or persons whatsoever, who shall buy any fish in the said market, to sell the same again in any other market, place or places within the said city of London or elsewhere, by retail, except nevertheless that none but fishmongers shall be permitted to sell in publick or fixed shops or houses, being sound and wholesome fish, without any let or disturbance from any person or persons whatsoever for so doing; any law or statute to the contrary thereof in any wise notwithstanding. Fish bought  
in the said  
market may  
be sold in  
any other.

IX. Provided nevertheless, That this act shall not extend to alter any law now in being, concerning fish caught by foreigners. Proviso.

X. And whereas in the fifth year of the reign of Queen Elizabeth, among other things it was enacted, That from and after the first day of May then next coming, it should not be lawful to any person or persons, in any port, city, town, market, or other place within this realm, to set price, make any restraint, or take or demand toll or tax of any sea fish to be brought into this realm, or any part thereof, being taken by any of her majesty's subjects, in ships and

A. D. 1699. ‘ other vessels of the same subjects, upon pain, to every  
 ‘ person offending contrary to the meaning thereof, to  
 ‘ forfeit the value of the fish so restrained, prized, tolled,  
 ‘ or taken ; any liberty, custom, grant, privilege, or  
 ‘ other matter whatsoever to the contrary in any wise  
 ‘ notwithstanding ; yet contrary to the true meaning  
 ‘ thereof, several tolls, samples, and other exactions,  
 ‘ have been demanded and taken of sea fish ;’ be it  
 therefore enacted by the authority aforesaid, That from  
 and after the said tenth day of May, any person or per-  
 sons, taking or demanding any toll or sample, or any  
 other imposition, or set price, of any sea fish what-  
 soever, of English catching, shall forfeit the sum of  
 ten pounds, the one moiety thereof to his majesty,  
 and the other moiety to such person as shall sue for the  
 same.

Penalty on  
 person de-  
 manding toll  
 or sample of  
 sea fish.

‘ XI. And whereas of late years, an evil practice  
 ‘ hath been used by the fishmongers, in employing one  
 ‘ or two persons at the most to buy up all or the greatest  
 ‘ part of the fish which is brought to the said market at  
 ‘ Billingsgate, and afterwards dividing the same amongst  
 ‘ the fishmongers by lots, by reason whereof the fish-  
 ‘ mongers buy and sell at what rates they please ;’ be  
 it therefore enacted by the authority aforesaid, That  
 no such practices shall be at any time hereafter used or  
 allowed.

Evil practice  
 of fishmong-  
 ers not  
 allowed.

‘ XII. And for the better preventing the same, or the  
 ‘ like evil practices, for the time to come ; be it further  
 enacted, That no person or persons whatsoever shall, at  
 any time after the said tenth day of May one thousand  
 six hundred ninety-nine, employ or be employed by  
 any other person or persons in buying, in or at the said  
 market of Billingsgate, any quantity of fish, to be di-  
 vided by lots or in shares amongst any fishmongers, or  
 other persons, in order to be afterwards put to sale by  
 retail or otherwise ; nor shall any fishmonger, at any

Fish not to  
 be bought  
 up, to be di-  
 vided by lots,  
 and after-  
 wards re-  
 tailed.

time after the said tenth day of May, ingross or buy, in A. D. 1699. the said market of Billingsgate, any quantity of fish, but what shall be for his own sale or use, and not for or on the behalf of any other fishmonger to expose to sale, under pain of forfeiting for each such offence the sum of twenty pounds, one moiety thereof to the use of the poor <sup>Penalty.</sup> of the parish where such offence shall be committed, and the other moiety to his or their own use who shall sue for the same; and that from and after the said tenth <sup>Size of lob-</sup> day of May, no fisherman, or other person or persons, <sup>sters for sale.</sup> shall bring on shore, or put to sale, any lobsters, that are not eight inches from the peak of the nose unto the end of the middle fin of the tail, under pain of forfeiting for every such lobster the sum of one shilling, the <sup>Penalty.</sup> one moiety to the poor of the parish where the offence shall be committed, the other moiety to the prosecutor, to be recovered upon conviction before the chief magistrate of any city or town corporate, or before the next justice of peace where such offence shall be committed.

XIII. And for the better encouragement of the fishery <sup>Fish to be</sup> of this kingdom, be it further enacted by the authority <sup>imported in</sup> aforesaid, That from and after the said tenth day of <sup>English ship-</sup> May, no fish (except stock fish and live eels) taken or <sup>ing.</sup> caught by any foreigners, aliens to this kingdom (except <sup>Forfeiture.</sup> protestant strangers inhabiting within this kingdom) <sup>By 1 Geo. 1.</sup> shall be imported in any foreign ship, vessel, or bottom, <sup>Stat. 2. c. 18.</sup> not being wholly English property, and uttered, sold, <sup>§. 10.</sup> or exposed to sale, in this kingdom, under the pain of <sup>Foreigners</sup> the forfeiture of such ship, vessel, or bottom, with the <sup>may import</sup> tackle thereunto belonging, and of all such fish so im- <sup>lobsters and</sup> ported and sold contrary to the true intent and meaning <sup>turbots.</sup> thereof, one moiety thereof to the use of the poor of the parish where the same shall be so found or seized, the other moiety to his or their own use who shall so seize the same.



A. D. 1699.

Anchovies,  
sturgeon, &c.  
not pro-  
hibited.

XIV. Provided nevertheless, That nothing in this act contained shall be construed to prohibit the importation of anchovies, sturgeon, botargo, or caviar, nor selling of mackarel before or after divine service on Sundays.

Cod and ling  
continued as  
usual.

XV. Provided always, That nothing in this act contained shall be construed to take away an ancient duty of cod and ling, payable to the Kings of this realm, for the service of their household, by such merchants as trade to Westmouney and Iceland, but that the same may be taken by his majesty's officers, in such manner as the same hath been lawfully used to be taken before the making of this act.

A. D. 1705.

4 ANNÆ, CAP 21. A. D. 1705.

AN ACT FOR THE INCREASE AND BETTER PRESERVATION OF SALMON AND OTHER FISH, IN THE RIVERS WITHIN THE COUNTIES OF SOUTHAMPTON AND WILTS.

‘ Whereas the salmon and salmon-kind of fish resort-  
‘ ing to spawn within the rivers and freshes in the  
‘ county of Southampton, and southern parts of Wilt-  
‘ shire, are in danger of utter decay, to the great loss  
‘ of this kingdom, and the royalties and fisheries in the  
‘ said counties are in great measure consumed and de-  
‘ stroyed by placing divers engines and other devices in  
‘ and upon the main rivers, and in the new channels,  
‘ dykes, and cuts, which now are or shall be cut out of  
‘ the same rivers, by means whereof the salmon stripes  
‘ or kippers, as well as the young fry or smelts, are  
‘ taken and destroyed, and are prevented from return-  
‘ ing to the sea in season: and whereas the owners and  
‘ occupiers of the salmon fisheries within the said coun-  
‘ ties, regarding only their private and greedy profit, to

' destroy the stock of the said fisheries, by prevent- A. D. 1705.  
 ' ing the breed of good fish to pass in season through  
 ' their fishing wyres, and fishing hatchways, from the  
 ' sea into the said rivers to spawn, and by killing such  
 ' as are under size, and by fishing continually out of  
 ' season, at and in the said fishing wyres and creeks of  
 ' the rivers, with nets and other devices, whereby not  
 ' only the increase of the species of the said fish, but  
 ' also the growth thereof is in great measure destroyed ;  
 ' and whereas notwithstanding the many good laws be-  
 ' fore this time made, and still in force, with intent to  
 ' prohibit unlawful killing or otherwise destroying the  
 ' game of this kingdom, divers sturdy and disorderly  
 ' persons (through defect in the said laws for sufficiently  
 ' punishing of offenders, and neglecting their lawful  
 ' employments) do poach with nets and angles, gins,  
 ' and other unlawful engines, and by unlawful means in  
 ' the night, and at other times, do take, kill, and  
 ' destroy the fish, to the great detriment of the lords of  
 ' manors, and the other owners and occupiers of fish-  
 ' eries in the said county of Southampton, and southern  
 ' parts of Wiltshire ;' for remedy whereof, be it  
 ' enacted by the queen's most excellent majesty, by  
 ' and with the advice and consent of the lords spiritual  
 ' and temporal, and commons, in this present parliament  
 ' assembled, and by the authority of the same, That the  
 ' statute made in the fourth and fifth year of the reign of  
 ' King William and Queen Mary, now in force, for the  
 ' better preservation of the game relating to salmon fish-  
 ' ing, and every article and thing therein contained, shall  
 ' be duly put in execution, according to the tenor of the  
 ' same ; and that the statute made in the thirteenth year  
 ' of King Edward the First, whereby it is provided that  
 ' the waters of Humber, Owse, Trent, Dover, Arre, Der-  
 ' went, Wherse, Niddiore, Swale, Tese, Tine, Eden, and

Act 4 & 5 W.  
 & M. c. 23.  
 to be put in  
 execution ;  
 also st. 13.  
 Edw. 1.  
 st. 1. c. 47.  
 No young  
 salmon to be  
 destroyed by  
 nets, &c.

A. D. 1705. all other waters wherein salmon be taken, shall be in defence from taking salmon from the Nativity of our Lady unto Saint Martin's day; and likewise that young salmon shall not be taken nor destroyed by nets, nor by other engines, at mill pools, from the midst of April unto the Nativity of Saint John the Baptist, and in places where fresh waters be, shall extend and be in full force, as well to all and every the rivers, creeks, and waters in the county of Southampton, and southern parts of Wiltshire, as to the waters in the last mentioned act here above enumerated and contained, and in like manner, and under the same pains and penalties as therein mentioned and expressed.

Overseers of  
this act to be  
assigned by  
justices.

Who shall  
enquire after  
offenders.

Penalty on  
offenders.

II. And be it further enacted by the authority aforesaid, That there shall be assigned overseers of this statute, by any two or more justices of the peace, residing within five miles of the respective rivers within the said counties of Southampton and Wiltshire, under their hands and seals, from time to time, who being sworn before the said justices of the peace, shall often see and enquire after the offenders against this statute, and shall take and apprehend all and every such offender and offenders, and take and destroy all nets and other craft and engines, where they shall find the same, being kept, used, or in being contrary to this or any other act now in force relating to fishing; and all and every offender and offenders so taken or apprehended by the said overseers, or any of them, or by any other lawful means, shall be brought before some justice of the peace of the said counties, to answer for every such offence, and being convicted before any such justice of the peace for the said counties, by one or more witnesses upon oath, which oath the said justice hath hereby power to administer, or confession of such offender, shall, for the first trespass or offence, forfeit a sum to be ascertained by such jus-

tice of the peace, before whom such conviction shall be made, not under twenty shillings nor more than five pounds; and for the second trespass or offence shall forfeit a sum not under forty shillings, to be ascertained as aforesaid, nor more than ten pounds, and as the trespass or offence shall increase, to double the penalty, to be ascertained as aforesaid; one half thereof to be paid to the informer, and the other half thereof to the poor of the parish where the said offence or offences shall be committed; and in case the offender or offenders shall not be able, or do not on demand pay the said penalty or penalties, then he or they shall be sent by such justice of the peace, before whom such conviction shall be made as aforesaid, to the house or houses of correction within the said respective counties where such offender or offenders shall be taken, and there kept for the space of three months.

III. And be it further enacted by the authority aforesaid, That no person or persons (not being by law duly qualified) shall hereafter kill, destroy, or wilfully hurt any salmon or salmon-kind, or any other fish, and that neither they, nor any other person or persons whatsoever, shall and may at any time or times after the thirtieth day of June, which shall be in the year of our Lord one thousand seven hundred and six, take, kill, or destroy any salmon, salmon-peale, or salmon-kind, by hawks, racks, gins, nets, angles, or other devices whatsoever, until after the eleventh day of November in every year, or offer to sale any of the said fish so taken, under the like pains, penalties, forfeitures, and imprisonments, as are herein-before mentioned.

IV. And be it further enacted by the authority aforesaid, That if any salmon or salmon-kind, shall go into any of the dykes, cuts, or water carriages, that then all owners and occupiers of meadow grounds in and upon the banks of any waters or rivers in the said counties,

A. D. 1705.

No person shall take or kill salmon until after the 11th of November. This clause repealed by 1 Geo. 1. st. 2. c. 18. sect. 11. as to the owners of these fisheries, &c.

Owners of meadow grounds to let salmon, got into the dykes, pass into the



A. D. 1705. within the time limited and restrained by the said act, shall permit the said fish to pass or go out of the said cuts, or dykes, or streams, into the main rivers again, and not by any wilful means to destroy them for sale, or otherwise, under the like pains, penalties, forfeitures, and imprisonment, as afore-mentioned.

*Owners of mills to keep open one scuttle in the waste-hatch for the salmon to pass and repass, &c.* V. And be it enacted by the authority aforesaid, That all owners and occupiers of corn, fulling and paper mills, and other mills, upon any the waters or rivers in the said counties, shall constantly keep open one scuttle or small hatch of a foot square, in the waste-hatch or water-course in the direct stream, wherein no water-wheel standeth, sufficient for the salmon to pass and repass freely up and down the said rivers in the said counties, from the eleventh day of November, to the one and thirtieth day of May in every year, during which season, the old salmon and the young fry of the preceding year retire to the sea, and the breeding salmon come from the sea to spawn, and shall not make use of any néts, pots, racks, hawks, gins, or other devices whatsoever to be placed in the said scuttle or small hatch of a foot square in the said waste-hatch, in or about the said mills respectively, during the said term, to kill or destroy, or take any salmon or salmon-kind, upon the like pains, penalties, forfeitures, and imprisonment, as aforesaid; and in case they shall lay any pots or nets to catch eels, after the first day of January to the tenth day of March in every year (which they may do) they shall set racks before them, to keep out of the said pots or nets the old salmon or kippers, which, during that season, are out of kind, and returning to the sea; and after the tenth day of March to the one and thirtieth day of May in every year, they shall lay no pot, net, or engine, but what shall be wide enough to let the fry of salmon pass through to the sea, or shall take, or keep, or offer to sale any of the young fry, that, during the seasons afore-

*Fel pots to have racks before them.*

said, are returning from the said rivers to the sea, upon A. D. 1705. the pains, penalties, forfeitures, and imprisonment, as aforesaid.

VI. And be it further enacted by the authority afore-No sea trouts said, That no bouges, otherwise called sea trouts, shall to be taken be taken in any of the said rivers, creeks, or arms of the in the rivers. sea, in the counties before-mentioned, after the thirtieth day of June to the eleventh day of November every year, upon the like pains, penalties, forfeitures, and imprisonments, as aforesaid.

VII. And whereas divers disorderly, idle, and mean None to persons have and keep nets, angles, leaps, pitches, keep nets, &c. and other engines for the taking and killing of fish out other than what are al-  
lowed by 4 &  
5 H. & M.  
it c. 35. and by  
3 H. & M.  
c. 10— but as  
to the latter  
statute there  
seems to be  
a mistake:  
for it contains  
no regula-  
tions what-  
ever relating  
to fish.  
Here seems  
to be a mis-  
take in the  
roll, there be-  
ing no such  
statute as is  
here referred  
to, in 2 H. &  
M. but only  
in 4 & 5 H.  
& M.  
 therefore enacted by the authority aforesaid, That no person or persons whatsoever shall have or keep any net, angle, leap, pitch, or other engine for taking of fish, other than as is provided for and allowed of by an act made in the second year of King William and Queen Mary, intituled, an act for the more easy discovery and conviction of such as shall destroy the game of this kingdom, and the subsequent acts made in the third, fourth, and fifth years of the said King William and Queen Mary, for the more easy conviction of such as shall destroy the game of this kingdom; none of which acts, or any part or matter therein contained, or in any other act relating to the preservation of the game of this kingdom, is hereby intended or deemed to be repealed.

VIII. And be it enacted, That if any person or persons shall sell or expose to sale any salmon or salmon-kind in the said counties, from the thirtieth day of June to the eleventh day of November in every year, such person or persons shall, for every salmon or salmon-kind so sold or exposed to sale, be subject to the Penalty on selling salmon, &c. 1 Geo. 1. c. 18. §. 11.

A. D. 1705. pains, penalties, forfeitures, and imprisonments, as aforesaid.

Forfeitures of enclosures to be levied by distress and sale, &c.

IX. And be it further enacted by the authority aforesaid, That all the forfeitures and penalties arising by conviction of any offender or offenders against this act, shall be levied by distress and sale of the offenders goods, by warrant under the hand and seal of the justice before whom the offender or offenders shall be convicted, rendering the overplus, if any be; and for want of distress, the offender or offenders shall be committed to the house or houses of correction in the said counties as aforesaid.

Extent of the act.

X. Provided always, That this act, or any thing herein contained, shall not extend, or be construed to extend, to any county or place in this kingdom, save only to the said county of Southampton, and the southern parts of Wiltshire; any thing herein contained to the contrary notwithstanding.

A. D. 1706.

5 ANNE, CAP. 14. A. D. 1706. *Rep*

AN ACT FOR THE BETTER PRESERVATION OF THE  
GAME.

All laws for preservation of the game to continue in force, &c.

Made perpetual by

9 Ann. c. 25. which contains other regulations.

‘ Whereas several laws have been already enacted for the better preservation of the game, and by experience been found not sufficient to prevent destroying the game, by reason of the multitude of higlars and other chapmen, which give great encouragement to idle loose persons to neglect their lawful employments, to follow and destroy the same;’ for remedy whereof, and the more effectual preservation of the game, be it enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all

and every of the laws now in being for the better preservation of the game, shall continue, remain, and be in the same force, not hereby repealed or altered. A. D. 1706.

II. And be it further enacted by the authority afore-  
 said, that if any higlar, chapman, carrier, inn-keeper, victualler, or alehouse-keeper, shall from and after the first day of May one thousand seven hundred and seven, have in his or their custody or possession, any hare, pheasant, partridge, moor, heath-game, or grouse, or shall buy, sell, or offer to sell any hare, pheasant, partridge, moor, heath-game, or grouse, every such higlar, chapman, inn-keeper, victualler, alehouse-keeper, or carrier, (unless such game in the hands of such carrier be sent up by person or persons qualified to kill the game,) shall upon every such offence be carried before some justice of the peace for the county, riding, city, or town corporate, or liberties where the said offence is committed; and upon view, or upon the oath of one or more credible witnesses, shall be convicted of the same, shall forfeit for every hare, pheasant, partridge, moor, heath-game, or grouse, the sum of five pounds, one half to the informer, and the other half to the poor of the parish where the offence was committed; the same to be levied by distress and sale of the offender's goods, &c. by warrant under the hand and seal of the justice or justices of the peace before whom such offender or offenders shall be convicted, rendering the overplus (if any be) the charge of distraining being first deducted; and for want of distress, the offender or offenders be committed to the house of correction for the first offence, for the space of three months, without bail or mainprize, and for every such other offence, for the space of four months; provided, that such conviction be made within three months after such offence committed; and that *if any* certiorari shall be allowed to remove any conviction made, or other proceedings of or

Higlar, carrier, &c. not to have any hare, or buy or sell hare, &c. on penalty of 5l. See 3 Bur. 1720.  
 1 J. c. 27. s. 4.  
 To be levied by distress, &c.

(Q. no ?)



A. D. 1706. concerning any matter or thing in this act, into any of the courts at Westminster, upon any pretence whatsoever, unless the party or parties, against whom such conviction shall be made, shall, before the allowance of such certiorari, become bound to the person or persons prosecuting the same, in the sum of fifty pounds, with such sufficient securities as the justice or justices of the peace, before whom such offender shall be convicted, shall think fit, with condition to pay unto the prosecutors, within fourteen days after such conviction or procedendo granted, their full costs and charges, to be ascertained upon their oaths; and that in default thereof, it shall be lawful for the said justice or justices, or others, to proceed for the due execution of such conviction, in such manner as if no such certiorari had been awarded.

Encourage-  
ment to de-  
stroyers of  
the game, to  
make disco-  
veries.

III. And for the better discovery of such higlar, chapman, carrie, inn-keeper, alehouse-keeper, and victual-ler, as shall offer to buy or sell any hare, pheasant, partridge, moor, heath-game, or grouse, be it further enacted by the authority aforesaid, That from and after the said first day of May, any person that shall destroy, sell, or buy any hare, pheasant, moor, heath-game, or grouse, and shall within three months make discovery of any higlar, chapman, carrier, inn-keeper, alehouse-keeper, or victualler, that hath bought or sold, or offered to buy or sell, or had in their possession any hare, pheasant, partridge, moor, heath-game, or grouse, so as any one shall be convicted of such offence, in manner as aforesaid, such discoverer to be discharged of the pains and penalties hereby enacted for killing or selling such game, as aforesaid, shall receive the same benefit or advantage as any other informer shall be entitled to, by virtue of this act, for such discovery and information.

Persons not

IV. And be it enacted by the authority aforesaid.

That if any person or persons, not qualified by the laws of this realm so to do, shall keep or use any greyhounds, setting dogs, hayes, lurchers, tunnells or any other engines to kill and destroy the game, and shall be thereof convicted upon the oath of one or two credible witnesses, by the justice or justices of the peace where such offence is committed as aforesaid, the person or persons so convicted shall forfeit the sum of five pounds; one half to be paid to the informer, and the other half to the poor of the parish where the same was committed; the same to be levied by distress and sale of the offenders goods, by warrant under the hand and seal of such justice or justices, before whom such person or persons shall be convicted, as aforesaid; and for want of such distress, the offender or offenders shall be sent to the house of correction for the space of three months for the first offence, and for every such other offence four months; and that it shall and may be lawful to and for any of her majesty's justices of the peace, in their respective counties, cities, towns corporate, or liberty, and the lords and ladies of his, her, their, or any of their respective manors, within the said manors, to take away any such hare, pheasant, partridge, moor, heath-game, or grouse, or any other game, from any such higlar, chapman, game-keeper, victualler, or carrier, or any other person or persons not qualified to kill the same, and shall be found in their custody or possession: and likewise to take away such dogs, nets, or other engines, which shall be in the power or custody of any person or persons not qualified by the laws to keep the same, to their own proper use, without being accountable to any person or persons for the same; and that it shall and may be lawful for any lord or lady of his or her respective lordship or manor, by writing under his or her hand and seal, to empower his or her game-keeper or game-keepers upon his or her own lordship or manor as aforesaid, to kill

A. D. 1706.  
qualified to keep greyhounds, &c.  
and destroy the game, to forfeit 5l. to be levied by distress and sale, &c.  
Sec 1 Bur. 148.  
Justices, or lords of manors, &c. may take away any hare, &c. from person not qualified; and also their dogs, nets, &c. By 3 Geo. 1. c. 1. none shall be made game-keepers but persons qualified, or the lord's servants.  
Penalty on game-keeper killing the game, and selling it without consent of lord of manor, &c.  
This act made perpetual by 9 Ann. c. 25. as

A.D. 1706. hare, pheasant, partridge, or any other game whatso-  
 altered by ever; but if the said game-keeper shall, under colour or  
 that act, pretence of the said power and authority to kill or take  
 the same for the use of such lord or lady, *and* after-  
 wards sell and dispose thereof to any person or persons  
 whatsoever, without the consent or knowledge of the  
 lord or lady of such manor or manors that hath given  
 such power or authority, in manner as aforesaid, and  
 shall be thereof convicted upon the complaint of such  
 lord or lady of any manor, and upon the oath of one or  
 more credible witnesses, before any one or more of her  
 majesty's justices of the peace as aforesaid, upon such  
 conviction such game-keeper shall be committed to the  
 house of correction for the space of three months, and  
 there to be kept to hard labour. And this act shall re-  
 main and be in force for the space of three years, from  
 the first day of May one thousand seven hundred and  
 seven, and from thence to the end of the next sessions of  
 parliament, and no longer.

No heath,  
 ling, or  
 brakes to be  
 burnt in  
 forest of  
 Sherwood,  
 without  
 licence of  
 owner.

‘ V. And whereas the burning of heath, ling, and  
 ‘ brakes, or fern, upon the forest of Sherwood in the  
 ‘ county of Nottingham, and in the parts thereunto ad-  
 ‘ jacent, as it is frequently used by divers disorderly and  
 ‘ dissolute persons, doth not only destroy the breed of  
 ‘ game, but hath also very frequently been the occasion  
 ‘ of burning, damaging, and destroying of great quan-  
 ‘ tities of wood, timber, and fences, within the said  
 ‘ forest, and places thereunto adjacent, to the great  
 ‘ damage and prejudice of the owners thereof;’ be it  
 further enacted by the authority aforesaid, That if any  
 person or persons shall, at any time after the said first  
 day of May, set fire to any ling, heath, or brakes, grow-  
 ing upon any part of the said forest, or on any other  
 waste, common, or land within the said county of Not-  
 tingham, or shall cut any ling, heath, or brakes, in order  
 to be burnt to ashes upon the ground, or shall burn the

same to ashes upon the ground, in any part of the said A. D. 1706. forest, or in any waste, common, or land, lying within the said county, without licence from the owner of the soil where such offence shall be committed, shall forfeit to the owner of the soil where such offence shall be committed ten shillings, and all the ashes which shall be so burnt; and every person or persons who shall buy fern ashes of any such unlicensed person or persons within the said county, shall forfeit for every peck of such ashes, which shall be so bought, the sum of ten shillings; one moiety thereof to the poor of the parish where such offence shall be committed, and the other moiety thereof to such person or persons as shall give information of the said offence; and it shall be lawful for the keepers and officers of such parts of the said forest, and for the owners of the land or soil where any the said offences shall be committed, their servants and agents, to take away, for his and their own use, the scithes, rakes, and other instruments to be used for any the purposes aforesaid, of every person and persons who they shall find so offending; and it shall be lawful for any one or more of her majesty's justices of the peace, upon complaint made to him or them against any person or persons for any the said offences, to send forth his or their warrant or warrants to bring the person or persons so complained of before him or them; and if the person or persons so complained of, shall be convict of any of the said offences before such justice or justices, by the oath or oaths of one or more witness or witnesses, then and in such case the party so convict shall, immediately after such conviction, pay such penalties and forfeitures as are hereby before imposed for the said offences respectively, to such person and persons as the same penalties and forfeitures are hereby appointed to be paid; and in default thereof shall be committed by such justice or justices to the house of correction, there to be kept to hard labour for

None to buy  
fern ashes  
on penalty.

Justices to  
issue their  
warrants for  
offenders.



A. D. 1706. the space of one month, unless the said penalties and forfeitures shall be in the mean time paid.

A. D. 1710.

9 ANN. C. 25. A. D. 1710. *Rep.*

AN ACT FOR MAKING THE ACT OF THE FIFTH YEAR OF  
HER MAJESTY'S REIGN, FOR THE BETTER PRESER-  
VATION OF THE GAME, PERPETUAL, AND FOR  
MAKING THE SAME MORE EFFECTUAL.

5 Ann. c. 14.  
Made perpetual.

‘ Whereas the act made in the fifth year of her ma-  
jesty’s reign, intituled, “ an act for the better preser-  
vation of the game,” will expire at the end of this pre-  
sent session of parliament, unless the same be conti-  
nued : and whereas the said act hath been found to be  
an useful law for the preservation of the game of this  
kingdom ;’ be it therefore enacted by the queen’s  
most excellent majesty, by and with the advice and  
consent of the lords spiritual and temporal, and com-  
mons in this present parliament assembled, and by the  
authority of the same, That the said recited act, and all  
the clauses, matters, and things therein contained, shall  
stand in full force and virtue, and be continued and  
deemed and taken to be a perpetual law, subject never-  
theless to the additions or alterations herein-after in this

Lords of manors shall  
appoint but  
one game-  
keeper in one  
manor,  
whose name  
shall be en-  
tered with  
the clerk of  
the peace.  
5 Geo. 1.  
c. 11. the  
game-keeper  
must be  
either quali-  
fied or the

act contained : that is to say, whereas by the said re-  
cited act, any lord or lady of a manor might appoint  
several game-keepers in the same manor, and every one  
of the game-keepers so appointed might kill any game  
in the same manor ; for the preventing therefore of the  
destruction of the game of this kingdom, which may  
happen by appointing several game-keepers in the same  
manor, with authority to kill the game therein ; be it  
further enacted by the authority aforesaid, That from  
and after the first day of May one thousand seven hun-  
dred and eleven, no lord or lady of a manor shall make,

constitute or appoint above one person to be a game-keeper within any one manor, with power or authority to kill or destroy the game thereof; and that the name of such person, so to be authorized to kill the game, shall, from time to time, be entered with the clerk of the peace for the time being, of the county, riding, or division wherein such manor doth lie, such entry to be made and viewed without fee or reward, and a certificate thereof to be granted by the clerk of the peace, upon payment of one shilling for the same; and in case any other game-keeper, whose name shall not be so entered, as aforesaid, who shall not be otherwise qualified by the laws of this kingdom to kill game, shall presume to kill any hare, pheasant, partridge, moor, heath-game, or grouse, or if any game-keeper or game-keepers, or other person or persons whatsoever, not being qualified in his own right to kill game, shall sell or expose to sale any hare, pheasant, partridge, moor, heath-game, or grouse, the respective offender or offenders herein shall, for every offence, incur such forfeitures, pains, and penalties, as are inflicted by the said recited act upon higlers, carriers, inn-keepers, or victuallers, for buying or selling of game; such forfeitures to be recovered by such means, and in such manner and form, and within such time, and to such uses, as are prescribed by the said act; any thing in the said recited act, or in any other law or statute to the contrary thereof in any wise notwithstanding.

II. And be it further enacted by the authority aforesaid, That if any hare, pheasant, partridge, moor, heath-game, or grouse, shall be found in the shop, house, or possession of any person or persons whatsoever, not qualified in his own right to kill game, or being entitled thereto under some person so qualified, the same shall be adjudged, deemed, and taken to be an exposing thereof to sale, within the true intent and mean-

A. D. 1710

lord's servant.

If any hare,  
&c. be found  
in the shop,  
&c. of any  
unqualified  
person, &c.  
it shall be  
judged an  
exposing to  
sale.

A. D. 1710. ing of this and the said recited act ; any thing in this or in the said recited act contained to the contrary thereof in any wise notwithstanding.

Killing any  
hare, &c. in  
the night, to  
incure the like  
forfeitures.

III. And be it further enacted by the authority aforesaid, That if any person or persons whatsoever shall take, kill, or destroy any hare, pheasant, partridge, moor, heath-game, or grouse, in the night-time, the person or persons so offending, shall likewise for every such offence incur such forfeitures, pains, and penalties, as aforesaid, to be recovered likewise by such means, within such time, and to such uses, as aforesaid.

10 Geo. 2.  
c. 32.

‘ IV. And whereas very great numbers of wild-fowl, of several kinds, are destroyed by the pernicious practice of driving and taking them with hayes, tunnels, and other nets, in the fens, lakes, and broad waters, where fowl resort in the moulting time, and that at a season of the year when the fowl are sick, and moulting their feathers, and the flesh unsavoury and unwholesome, to the prejudice of those that buy them, and to the great damage and decay of the breed of wild-fowl ;’ be it therefore further enacted by the

No person  
shall be-  
tween 1 July  
and 1 Sept.  
take any  
wild duck,  
&c. by  
hayes, &c.  
on forfeiture  
of 5s. for each  
wild-fowl,  
3s.

authority aforesaid, That if any person or persons whatsoever, between the first day of July and the first day of September, as they shall yearly happen, shall by hayes, tunnels, or other nets, drive and take any wild-duck, teal, widgeon, or any other fowl, commonly reputed water-fowl, in any of the fens, lakes, broad waters, or other places of resort for wild-fowl in the moulting season, such person or persons, who shall so offend, and thereof shall be convicted before any one or more of her majesty’s justices of the peace for the county where such offence shall be committed, by the oath of one or more credible witness, shall for every wild duck, teal, or other water-fowl so taken, as aforesaid, forfeit and pay the sum of five shillings ; one moiety thereof to be paid to the informer, and the other moiety to the

poor of the parish where such offence shall be committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of the justice and justices of the peace, before whom the offender shall be convicted, rendering the overplus, if any be, above the penalty and charge of distress; and for want of distress the offender or offenders shall be committed to the house of correction for any time not exceeding one month, nor less than fourteen days, there to be whipped and kept to hard labour; and the justice or justices of the peace, before whom such person or persons so offending shall be convicted, shall order such hayes, nets, or tunnels, that were used in driving and taking the said wild-fowl, as aforesaid, to be seized, and immediately destroyed, in the presence of such justice or justices.

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9 ANN. C. 26. A. D. 1710.

AN ACT FOR THE BETTER PRESERVATION AND IMPROVEMENT OF THE FISHERY WITHIN THE RIVER OF THAMES, AND FOR REGULATING AND GOVERNING THE COMPANY OF FISHERMEN OF THE SAID RIVER.

‘ Whereas the preservation of the fishery of the river  
 ‘ of Thames, and the good government of the company  
 ‘ of fishermen of the said river, are not only highly necessary for furnishing her majesty's subjects inhabiting  
 ‘ within the cities of London and Westminster, and the  
 ‘ parts adjacent, with good, wholesome, cheap, and  
 ‘ seasonable fish, but likewise advantageous to her majesty, and the trade of this kingdom, in breeding up  
 ‘ able-bodied sea-faring men, and preventing frauds  
 ‘ committed in running of goods and merchandizes,  
 ‘ whereby the revenues of the crown have been much



A. D. 1710. 'lessened;' Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the

Court of assistants of the fishermen's company may make by-laws to be approved of by the court of aldermen of London, who shall choose yearly a master of the art of fishermen, and six wardens (the water-bailiff of London to be one) and thirty assistants.

same, That from and after the tenth day of June one thousand seven hundred and eleven, it shall and may be lawful to and for the court of assistants of the said company for the time being, or the major part of them present, to make such by-laws and ordinances for the good rule and government of the said company, as they shall think fit, so as the same be always first approved of, or from to time altered or amended by the court of the lord-mayor and aldermen of the city of London, and likewise allowed and confirmed, according to the form of the statute in that behalf made and provided; and that from and after the said tenth day of June, there shall be yearly and every year elected and chosen by the next court of lord-mayor and aldermen to be held after the said tenth day of June, out of the six wardens of the said company for the time being, to be nominated by the said court of assistants, one fit person to be a master of the said art or mystery of fishermen; and also out of twelve assistants to be nominated, as aforesaid, six fit persons to be wardens of the said art or mystery, (whereof the water-bailiff of the city of London for the time being shall be one,) and in like manner, out of sixty of the commonalty to be nominated as aforesaid, thirty fit persons to be assistants of the said company; which said master, wardens, and assistants, or any sixteen of them, together with three of the said wardens, shall be, and are hereby constituted the court of assistants of the said company for the time being, and shall meet and assemble together from time to time, on the first Thursday in every calendar month in the year, in the hall of the said company, in order to form the said court of assistants, and keep the same, for regulating and reforming abuses committed

Court of assistants to meet the first Thursday in every month, to regulate abuses, &c.

in the said fishery, and for the due ordering and go- A. D. 1710.  
 vernance of the said company ; to the holding of which  
 court the said water-bailiff shall be always duly sum-  
 moned to attend ; and the said court of assistants, or the They shall  
 major part of them present, shall, from time to time, call summon the  
 before them all and every such person and persons as fishermen,  
 shall use to fish or drudge within the limits of the said and cause  
 fishery as common fishermen or drudgermen, and cause their names  
 every such person and persons, being duly qualified, or to be regis-  
 having served on-board her majesty's navy for the tered, &c.  
 space of two years, to have his or their name or names  
 entered and registered in a book or books to be kept by  
 the said court of assistants for that purpose, together  
 with his and their respective places of abode, and the  
 name of every apprentice or servant belonging to him or  
 them, in using the trade of fishing or drudging within  
 the said limits ; and shall likewise cause some mark of Shall cause  
 distinction, by figure or otherwise, to be placed on every marks to be  
 boat, vessel, and craft, which shall, after the said tenth put on every  
 day of June, be used in fishing or drudging within the boat.  
 limits aforesaid ; which said figure or mark of distinc-  
 tion shall not be changed, altered, or defaced, to the  
 end, that from time to time, and at all times hereafter,  
 every such person and persons, apprentice and servant,  
 as shall offend, contrary to the meaning of this act, may  
 the better be detected, and that her majesty, her heirs  
 and successors, may the better be enabled to know what  
 number of able-bodied seamen the said company can  
 furnish for publick service ; and that every person and Every per-  
 persons, being duly summoned by the direction of the son summon-  
 said court of assistants, to be and appear before them, ed, &c. and  
 in order to be entered and serve on board her majesty's refusing to  
 navy, who shall, without lawful cause, refuse or neglect appear, shall  
 to appear, according to the tenor of such summons, be sent on  
 shall be sent on-board her majesty's navy, and be dis- board the  
fleet, and dis-  
abled from  
fishing for  
two years.

A. D. 1710. abled from fishing on the said river of Thames for the space of two years.

No spawn,  
&c. to be  
killed, &c.  
nor fish  
caught out of  
season.

II. And be it enacted by the authority aforesaid, That no person or persons whatsoever shall, from and after the said tenth day of June, wilfully kill, or expose to sale, any spawn, fry, or brood of fish, or spatt of oysters, or any unsizeable, small, or unwholesome fish, or catch, kill, or destroy any fish out of season, or expose such fish to sale, or wilfully or knowingly buy, harbour, receive, or use as food for hogs, or otherwise, any such spawn, fry, brood of fish, or spatt of oysters, unsizeable, small, or unwholesome fish, or any fish caught out of season; on pain of being punished as herein-after

No salmon to  
be taken be-  
tween Aug.  
24 and Nov.  
11.

is mentioned; and that salmon fish, which are become very scarce by destroying great quantities of salmon and salmon-kind fish, betwixt the twenty-fourth day of August and the eleventh day of November in every year, when they are out of season, or spawning, may become very plentiful and common in the said fishery, as they were formerly, no person or persons whatsoever shall presume to fish for, or take and wilfully kill, hurt, or destroy, any salmon, or salmon-kind fish within the said limits, at any time or times betwixt the said twenty-fourth day of August and the said eleventh day of November in any year, from and after the said tenth day of June; and that it shall and may be lawful for the said lord-mayor, upon application to him by the said court of assistants, to order and direct any number of stakes to be driven and fixed in any place within the said river, betwixt the London-mark stone above Staines-bridge and London-bridge, as by him and them shall be thought most convenient for preserving the fry, spawn, and brood of fish, so as the same be no ways prejudicial to the navigation of the said river; and that no person or persons whatsoever shall presume, without

The lord-  
mayor, &c.  
may order  
stakes to be  
fixed in the  
river to pre-  
serve the fry.



lawful authority, to remove, loosen, or pluck up the same, on pain of being punished as herein-after is mentioned. A. D. 1710.

III. And, to the intent the publick may be served with fish cheap, and at the first hand, and for a more speedy way to punish offenders, who daily regrate great quantities of unsizeable and unseasonable, as also other fish, in and at the market of Billingsgate, be it therefore enacted by the authority aforesaid, That no fish shall be sold more than once within the said market, or within one hundred and fifty yards of Billingsgate-dock, to which all sorts of fish are usually imported; nor shall any person or persons, other than free fishmongers, in their houses and shops, situate and being within the distance of the said one hundred and fifty yards of the said dock, and not in the market of Billingsgate aforesaid, and other than fishermen, or the first importers of, or persons bringing up such fish to the said market, their wives, apprentices, factors, or servants for the time being, actually hired for that purpose, presume to sell, or expose to sale, any manner of fish whatsoever in or at the said market, or within one hundred and fifty yards of the said dock, after the said tenth day of June, on pain of being punished as herein-after is mentioned.

IV. And be it enacted by the authority aforesaid, That the said court of assistants shall yearly and every year, by even and equal portions, on the feast days of Easter and Michaelmas, pay or cause to be paid unto the said water-bailiff, or his assigns, the sum of thirty pounds, free from all taxes and other incumbrances, in lieu and satisfaction of such ancient fees as were due to him, and which will be diminished or taken away by virtue of this act, except the granting licences for taking fish in their several seasons, according to custom, the benefit whereof is hereby intended to be continued and saved unto the said water-bailiff for the

No fish shall be sold more than once within Billingsgate-market, &c. and none to sell fish in the said market, except, &c.

Court of assistants to pay 30l per annum to the water-bailiff.



A. D. 1710. time being, over and above the said sum of thirty pounds per annum.

No fish to be sold in the said market, &c. before three in the morning from Lady-day to Michaelmas and five from Michaelmas to Lady-day. V. And, for the further preventing forestalling, regrating, and engrossing fish, at unseasonable hours, in the market of Billingsgate, be it further enacted by the authority aforesaid, That no fish whatsoever shall be sold or exposed to sale, on board or on shore, (within the limits of the said market, or within one hundred and fifty yards of the said dock, as aforesaid,) by any person or persons whatsoever, before the hours of three o'clock in the morning from Lady-day to Michaelmas, and before the hours of five o'clock in the morning from Michaelmas to Lady-day, and so annually; and that the proper officer do ring the bell appointed for that purpose, at the time and place aforesaid, under the penalties to be inflicted by this act.

The lord-mayor, &c. shall have power to determine complaints,

and impose a fine on offenders, not above 10*l.* nor less than 5*s.* to be levied by distress, unless paid immediately, or security given, to

VI. And be it further enacted by the authority aforesaid, That the lord-mayor and aldermen of the city of London, or any one of them, for all offences committed within the jurisdiction of the said lord-mayor, as conservator of the said river of Thames, and the justices of the peace of the respective counties, or any one of them, for all offences committed in the said limits, and out of the jurisdiction of the said conservator, shall have full power, upon view, or upon complaint made to them, or any one of them, to examine, hear and determine, by the oath of any person, or by confession of the party offending, all complaints and offences committed against the intent of this act, and upon conviction of such offender, to impose a fine upon him or her, proportionable to the offence so committed, not exceeding the sum of ten pounds nor less than the sum of five shillings, to be levied by distress, or otherwise, on such offender's goods and chattels, at the discretion of the said lord-mayor, aldermen, or justices, or any one of them, unless such offender shall immediately pay such fine, or

give good and sufficient security to such magistrate or magistrates before whom he or she shall be so convicted, to stand to and abide such order as shall be made by the court of conservancy held by the said lord-mayor, as conservator as aforesaid, upon such conviction as shall be made by the said lord-mayor and aldermen, or any one of them, or at the general quarter-sessions by the justices of the peace holding the same, upon any such conviction made before them, or any one of them, in case the offender shall think fit to appeal to the said court of conservancy, or to the said quarter-sessions; and in case no distress or distresses can be found, the offender or offenders shall be sent to the house of correction, there to remain without bail or mainprize, and to be kept to hard labour, for any time not exceeding two months; and that all and singular the forfeitures and penalties arising by this present act, for any offences contrary thereunto, committed within the jurisdiction of the said conservator, shall, from time to time, be paid, the one moiety to the informer, the other moiety unto the said lord-mayor, as conservator of the said river of Thames; and that all the forfeitures and penalties arising by this present act, for any offences contrary thereunto, committed out of the jurisdiction of the said conservator, shall from time to time be paid, the one moiety to the poor of the parish where such offence shall be committed, and the other moiety to such person who shall prosecute the said offender.

A. D. 1710.

abide the order of the said court of conservancy, &c.

If no distress, the offender to be sent to the house of correction for two months.

How the forfeitures shall be applied.

VII. Saving always to the queen's most excellent majesty, her heirs and successors, and all bodies politick or corporate, and to the high court of admiralty, and the court of conservancy, and all other courts and persons, all fines, forfeitures, penalties, amerciaments, and wreck of sea, which of right have been reserved, and become due and payable to the said courts and persons respec-

Saving to the crown, &c. all fines, forfeitures, &c.

A. D. 1713 tively, for and in respect of the said fishery or drudging, or otherwise, and all rights, titles, estates, jurisdictions, privileges, franchises, or demands whatsoever, in as full and ample manner as the same were or have been before the making of this act.

This act not prejudicial rights, &c. VIII. Provided always, and be it enacted by the authority aforesaid, That this act, or any thing herein contained, shall not extend, or be construed to extend, to prejudice or derogate from the rights, privileges, or authorities of the city of London, exercised by the lord-mayor of the said city for the time being, as conservator of the said river of Thames, and waters of Medway, or elsewhere, or any of the rights of the admiralties or vice-admiralties of Kent or Essex, or the piscaries or fishings belonging or appertaining to the said city of London, or any other city or town corporate, or any lords of manors, proprietors, owners, or occupiers of any rivers, creeks, streams, or fisheries, adjacent to or within any part of the said limits, or to the rights of any other person or persons within the limits aforesaid.

Nor shall it extend to fishermen who dwell in the Cinque Ports, Ro- chester, &c. IX. Provided always, that nothing in this act contained shall extend, or be construed to extend, to any fishermen or drudgermen, who now do or shall hereafter inhabit or dwell in any of the Cinque Ports, or their members, or in the city of Rochester, or towns or places of Strood, Chatham, Finsbury, Gillingham, Milton, Queenborough, Feversham, Whitstaple, or the places adjacent; but that such fishermen and drudgermen shall and may use and exercise their trades of fishing and drudging, and selling, in as full and ample a manner as they have heretofore lawfully done, to all intents and purposes, as if this act had never been made.

It shall be taken as a public act; and if an ac- X. And be it further enacted by the authority aforesaid, That this act shall be deemed and taken to be and is hereby declared to be a public act of parliament, of

which all judges, justices, and other persons are to take notice; and in case any action, bill, plaint, suit or information shall be commenced or prosecuted against any person or persons for what he or they shall do in pursuance or by virtue of this act, such person and person shall and may plead the general issue, and give this act, and the special matter in evidence; and the defendant or defendants shall, in case the plaintiff be nonsuited, or discontinue his action, or that a judgment upon a demurrer, or a verdict pass against the plaintiff, recover his or their full costs of suit, for which the said defendant or defendants shall have the like remedy as in such cases where costs by the laws of this realm are given to defendants.

A. D. 1710.  
tion, &c. be  
brought, the  
defendant  
may plead  
the general  
issue, &c.  
and shall re-  
cover full  
costs.

XI. Saying also unto Margaret Cage, widow, her executors, administrators, and assigns, out of all monies arising to the said company by this act, and the other profits and income of the said company, one annuity granted unto her under the common seal of the said company for her life, and all arrears thereof, with interest.

Saving to  
Margaret  
Cage her  
annuity for  
life.

1 GEO. 1. ST. 2. C. 18. A. D. 1714.

A. D. 1714.

AN ACT FOR THE BETTER PREVENTING FRESH FISH TAKEN BY FOREIGNERS BEING IMPORTED INTO THIS KINGDOM; AND FOR THE PRESERVATION OF THE FRY OF FISH; AND FOR THE GIVING LEAVE TO IMPORT LOBSTERS AND TURBETS IN FOREIGN BOT-TOMS; AND FOR THE BETTER PRESERVATION OF SALMON WITHIN SEVERAL RIVERS IN THAT PART OF THIS KINGDOM CALLED ENGLAND.

‘ I. Whereas, notwithstanding the many good laws made for the preservation and improvement of the fishery in that part of this kingdom called England, particularly an act of parliament made in the fifteenth

15 Car. 2. c. 7.  
18 Car. 2. c. 2.



A. D. 1711. ‘ year of the reign of his late majesty King Charles the  
 ‘ Second, intituled, “ an act for the encouragement of  
 ‘ trade,” and one other act made in the eighteenth  
 ‘ year of the reign of his said late majesty, intituled,  
 ‘ “ an act against importing cattle from Ireland, and  
 ‘ other parts beyond the seas, and fish taken by fo-  
 ‘ reigners,” many evasions have of late years been in-  
 ‘ vented and practised, whereby that useful design has  
 ‘ been very much obstructed, and more especially by  
 ‘ the fraudulent practices of divers persons trading in  
 ‘ English smacks, and other vessels, who, when they are  
 ‘ off at sea, buy great quantities of fish caught by foreign-  
 ‘ ers, and import and market the same in this king-  
 ‘ dom, to the great discouragement and impoverishment  
 ‘ of his majesty’s subjects, and manifest detriment of the  
 ‘ fishery and navigation;’ for remedy whereof, be it  
 ‘ enacted by the king’s most excellent majesty, by and  
 ‘ with the advice and consent of the lords spiritual and  
 ‘ temporal, and the commons, in this present parliament  
 ‘ assembled, and by the authority of the same, That from  
 ‘ and after the twenty-ninth day of September, one thou-  
 ‘ sand seven hundred and fifteen, no herring, cod, pil-  
 ‘ chards, salmon, or ling, fresh or salted, dried or bloated,  
 ‘ nor any grill, mackarel, whiting, haddock, sprats, coal-  
 ‘ fish, gull-fish, congers, nor any sort of flat-fish, nor any  
 ‘ other sort of fresh fish whatsoever, shall be imported  
 ‘ into, sold or exposed to sale, in that part of this king-  
 ‘ dom called England, which shall be taken by, bought  
 ‘ of, or received from any foreigner or foreigners, or out  
 ‘ of any stranger or stranger’s bottom, except protestant  
 ‘ strangers inhabiting within this kingdom, nor shall any  
 ‘ person or persons give or exchange any goods or other  
 ‘ things in exchange for any sort of fish so taken as  
 ‘ aforesaid.

No fish taken  
 by foreigners  
 shall be im-  
 ported into  
 this king-  
 dom.

Every mas-  
 ter, &c. of  
 any smack,

II. And be it further enacted, That every master or  
 commander, for the time being, of any smack, hoy,

yager, boat, ship, or other vessel, in which any fish shall be imported or brought to shore, contrary to the true intent and meaning of this act, being thereof lawfully convicted upon his appearance, or default made after due summons, before one or more justice or justices of the peace of the county, city, or place where the offender shall reside or be found, by the oath of two or more credible witnesses, which oath such justice or justices are hereby impowered and required to administer, shall forfeit for every offence the sum of twenty pounds of lawful money of Great Britain, to be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal, or hands and seals, of such justice or justices, rendering to the party the overplus, if any be; and in default of payment of the said twenty pounds, or sufficient distress, the same justice or justices shall commit every such offender to the common gaol of such county, city, or place, there to suffer imprisonment during the space of twelve months.

A. D. 1714.

&c. in which any fish shall be imported, shall forfeit 20l. to be levied by distress.

or suffer twelve months imprisonment.

III. Provided, That nothing herein contained shall extend, or be construed to extend, to prevent the importing, buying, or exposing to sale any eels, stock-fish, anchovies, sturgeon, botarge, or cavaear.

IV. And whereas of late years the breed and fry of sea-fish has been greatly prejudiced and destroyed by the using of nets of too small size or mesh, and by other illegal and unwarrantable practices; be it enacted by the authority aforesaid, That from and after the twenty-fifth day of September, one thousand seven hundred and sixteen, if any person or persons shall use at sea, upon the coast of that part of Great Britain called England, any traul-net, drag-net, or set-net whatsoever, for the catching of any kind of fish (except herrings, pilchards, sprats, or lavidnian) which hath any mesh or moke of less size than three inches and an half at least from knot to knot, or which hath any false

Mesher of nets to be three inches and an half from knot to knot

A. D. 1711. or double bottom, cod or pouch, or shall put any net or  
 Nor shall any nets, though of legal size or mesh, upon or behind the  
 net, though others, in order to catch and destroy the small fish which  
 of legal size, would have passed through any single net of three  
 be put behind inches and half mesh, all and every such person and  
 another, persons so offending shall forfeit all and singular such  
 net or nets, so used contrary to the true intent and  
 meaning hereof, and also for every such offence the sum

an penalty of of twenty pounds of lawful money of Great Britain, to  
 forfeiture thereof, and be recovered and levied in such manner and form as the  
 20l. penalty above inflicted upon the master of any vessel,  
 wherein fish shall be imported contrary to this act, is  
 above directed to be recovered and levied; and in de-  
 fault of payment of the said twenty pounds, or of suffi-  
 cient distress, the offender to be imprisoned in like man-  
 ner, during the space of twelve months.

One moiety to the in- V. And it is hereby further enacted, That all penal-  
 former, the ties and forfeitures mentioned in this act, except nets of  
 other to the illegal or false bottoms, cods or pouches, as aforesaid,  
 poor. (all necessary charges for the recovery thereof being first  
 deducted) shall be distributed and disposed of in man-  
 ner following, (that is to say,) one moiety thereof to the  
 informer, and the other moiety thereof to the poor of the  
 parish where such offence shall be committed.

Illegal nets to be burnt. VI. And it is hereby further enacted and provided,  
 That where any illegal nets of less mesh or moke than  
 three inches and half at least from knot to knot, or of  
 false or double bottom, cod or pouch, shall be proved,  
 as aforesaid, to have been forfeited, such net or nets shall,  
 by warrant of such justice or justices, be publicly  
 burnt.

Penalty of selling un- ' VII. And for the further preservation of the said  
 sizeable fish. ' fry of fish,' be it enacted by the authority aforesaid,  
 See 29 Geo. 2. That if any person or persons shall, at any time after the  
 c. 39. twenty-ninth day of September, one thousand seven hun-  
 dred and fifteen, bring to shore in that part of Great

Britain called England, sell, offer or expose to sale, or A. D. 1714. shall exchange for any other goods, matter, or thing, any unsizeable fish, that is to say, bret, turbet, brill, or pearl, codlin, whiting, mullet, bass, plaice, soles, or flounders, which shall not be of the several lengths or sizes following, from the eyes to the utmost extent of the tail, (viz.) every bret or turbet, sixteen inches; every brill or pearl, fourteen inches; every codlin, twelve inches; every whiting, six inches; every bass and mullet, twelve inches; every sole, eight inches; every plaice or dab, eight inches; and every flounder, seven inches; all and every person and persons so offending, shall for every such offence forfeit all and every such unsizeable fish so brought on shore, sold, offered, or exposed to sale, or exchanged, as aforesaid, to the poor of the parish or place where such offence shall be committed, and also shall, for every such offence, forfeit and pay the sum of twenty shillings of lawful money of Great Britain, one moiety thereof to the informer, and the other moiety thereof to the poor of the parish or place where the offence shall be committed, and to be levied and recovered as other penalties by this act inflicted are directed to be levied and recovered; and in default of payment of the said forfeiture, or of sufficient distress for satisfaction thereof, the offender shall, by warrant of one or more justice or justices of the peace, be sent to the next house or houses of correction, or other common gaol or prison of any county, city, town or place, where such offence shall be committed, there to be severely whipped, and kept to hard labour for the space of six days, and not longer than fourteen days.

VIII. Provided always, That where any person shall suffer imprisonment pursuant to this act, for any offence contrary hereunto, in default of payment of, or sufficient



A. D. 1714. distress for any penalty hereby imposed, such person shall not be liable afterwards to pay such penalty.

IX. Provided also, That no person shall suffer any punishment for any offence committed against this act, unless the prosecution for the same be commenced within one month after such offence committed ; any thing herein contained to the contrary notwithstanding.

‘ X. And whereas by an act made in the tenth and ‘ eleventh years of King William the Third, intituled, ‘ an act for making Billingsgate a free market for ‘ sale of fish,” the importation of lobsters and turbets ‘ in foreign vessels is prohibited : and whereas the said ‘ prohibition has made lobsters and turbets much ‘ dearer than they were before the passing of the said ‘ act ;’ for remedy whereof, and for the better supplying this kingdom with lobsters and turbets at reasonable rates, be it further enacted by the authority aforesaid,

Lobsters and turbets may be imported as they might have been before the Act 10 & 11 W. 3. c. 24. That it shall and may be lawful to and for any person whatsoever, as well foreigners as British, freely to import, bring into, and sell in the kingdom of Great Britain, in any ship or vessel whatsoever, any quantity of lobsters or turbets, whether they be of foreign or British catching, in the same manner they might have done before the said recited act of the tenth and eleventh years of the reign of his late majesty King William was made ; any thing in the said act, or any other act since made, or usage to the contrary thereof, in any wise notwithstanding.

‘ XI. And whereas in an act of parliament, passed in ‘ the fourth and fifth years of the reign of her late majesty ‘ Queen Anne, intituled, “ an act for the increase ‘ and better preservation of salmon, and other fish in ‘ the rivers within the counties of Southampton and ‘ Wilts,” there is contained a clause whereby it is ‘ enacted, that no person or persons (not being duly

‘ qualified) should thereafter kill, destroy, or wilfully A. D. 1714.  
 ‘ hurt any salmon or salmon-kind, or any other fish;  
 ‘ and that neither they, nor any other person or persons  
 ‘ whatsoever, should or might, at any time or times  
 ‘ after the thirtieth day of June, which should be in the  
 ‘ year of our Lord one thousand seven hundred and  
 ‘ six, take, kill or destroy any salmon, salmon-peal, or  
 ‘ salmon-kind, by hawks, racks, gins, nets, angles, or  
 ‘ other devices whatsoever, until after the eleventh day  
 ‘ of November in every year, or offer to sale any of the  
 ‘ said fish so taken, under the pains, penalties, for-  
 ‘ feitures, and imprisonments in the said act men-  
 ‘ tioned;’ be it enacted by the authority aforesaid,  
 That the said clause, so far as the same doth and may  
 concern the respective owners and proprietors of the  
 fishery and fishing in the respective rivers in the said  
 act mentioned, and every other person and persons en-  
 titled to fish in the same, and every of them, and his  
 and their respective servants and agents, and every of  
 them, shall be and is hereby repealed, and be deemed  
 and taken to be hereby repealed.

Clause in 4  
& 5 Ann. c.  
21. repealed,  
so far as re-  
lates to the  
owners of  
the fisheries  
therein  
mentioned.

XII. And it is hereby enacted by the authority afore-  
 said, That it shall and may be lawful for such owners,  
 proprietors and persons, and his and their servants and  
 agents, and every or any of them, at any time or times  
 hereafter, from the eleventh day of November, which  
 shall be in the year of our Lord one thousand seven  
 hundred and fifteen, until the first day of August in  
 every year, to take, kill, or destroy any salmon, salmon-  
 peal, or salmon-kind, or offer to sale any of the said fish  
 so taken between the times aforesaid.

After Nov.  
11, 1715, till  
Aug. 1, in  
every year,  
such owners,  
&c. may take  
salmon, &c.

XIII. Provided, and it is hereby enacted by the au-  
 thority aforesaid, That no such owner, proprietor, or  
 person aforesaid, or any of his or their servants or agents,  
 shall or may at any time or times after the first day of Au-  
 gust, which shall be in the year of our Lord one thousand

No such  
owner shall,  
after Aug. 1,  
1716, till  
Nov. 12, fol-  
lowing, or in  
any year be-

A. D. 1714. seven hundred and sixteen, and between that day and  
 between those the twelfth day of November then next following, or at  
 days, take any time or times then after, between the first day of  
 any salmon, any August and the twelfth day of November in any year,  
 &c. take, kill, or destroy, or wilfully hurt any salmon,  
 salmon-peal, or salmon-kind, by hawks, racks, gins,  
 nets, angles, or other devices whatsoever, or offer to sale  
 any of the said fish so taken, under the like pains, pe-  
 nalties, forfeitures, and imprisonments, as are mentioned  
 and contained in the said recited act.

‘ XIV. And whereas the several acts of parliament  
 ‘ heretofore made for the preservation of fishing within  
 ‘ the rivers of this realm have hitherto proved ineffec-  
 ‘ tual in respect to the rivers Severn, Dee, Wye, Teame,  
 ‘ Were, Tees, Ribble, Mersey, Dun, Air, Ouze, Swaile,  
 ‘ Calder, Wharf, Eure, Darwent, and Trent, for want  
 ‘ of a due encouragement to be given to such persons  
 ‘ who would discover the many illegal practices and  
 ‘ abuses done therein, and by reason of the dilatoriness  
 ‘ and expensiveness of the suits and proceedings di-  
 ‘ rected by the said acts for punishing such abuses;’  
 wherefore for remedy thereof, and for the better securing  
 the spawn, fry, and young breed of salmon in the said  
 rivers, be it further enacted by the authority aforesaid,  
 That if any person or persons whatsoever shall, at any  
 time hereafter, lay or draw any kind of nets, engines, or  
 devices, or wilfully do or commit, or cause to be done  
 or committed, any other act whatsoever in the said rivers,  
 or in any of them, whereby the spawn, or small fry of  
 salmon therein, or any kepper or shedder salmons, or  
 any salmon not being in length eighteen inches or more,  
 from the eye to the extent of the middle of the tail, shall  
 be taken and killed, or destroyed, or shall hereafter  
 make, erect, or set any bank, dam, hedge, or stank, net  
 or nets cross the said rivers, or any part thereof, whereby  
 the salmon therein may be taken, or hindered from

Destroying  
 the fry of  
 salmon in the  
 rivers Se-  
 vern, Dee,  
 &c.

and taking  
 salmon in the  
 said rivers.



passing or going up the said rivers to spawn, or shall at A. D. 1714.  
 any time hereafter, between the last day of July and the between the last of July and Nov. 12.  
 twelfth day of November for ever, by or with any net, with any other net, &c.  
 device, engine, ways, or means whatsoever, take; kill, than are allowed by  
 destroy, or wilfully hurt any salmon of any kind or size 1 Eliz. c. 17.  
 whatsoever in the said rivers, or shall at any time after and 30 Car. 2.  
 the said twelfth day of November fish there for salmon stat. 1. c. 9.  
 with any other net or nets than what is or are allowed of the offender shall forfeit  
 by an act of parliament made in the first year of the 5*l.* besides the fish and  
 reign of Queen Elizabeth, intituled, ‘ an act for pre- nets; to be levied by dis-  
 ‘ servation of spawn and fry of fish;’ and by another tress;  
 act made in the thirtieth year of the reign of our late  
 sovereign lord King Charles the Second, intituled,  
 ‘ an act for the preservation of fishing in the river  
 ‘ Severn;’ every person so offending in any of the said  
 cases, who shall be convicted thereof before any justice  
 or justices of peace of the county wherein the said of-  
 fence shall be committed, either upon view of such  
 justice or justices, by confession of such offender, or by  
 one or more credible witness or witnesses upon oath  
 (which oath every such justice of peace is hereby im-  
 powered to administer) shall forfeit the sum of five  
 pounds for every such offence, besides the fish so taken,  
 and the nets, engines and devices used in doing or com-  
 mitting the same; one moiety of the said sum to be paid  
 to the informer or informers, and the other moiety  
 thereof to the poor of the parish where the said offence  
 shall be committed; to be levied by distress and sale of  
 the offender’s goods and chattels, by warrant under the  
 hand and seal of the justice or justices of the peace be-  
 fore whom he shall be convicted, as aforesaid, rendering  
 the overplus, if any be, over and above the charges of  
 the distress, to the person so distrained; and for want of  
 such distress the offender shall be committed to the house and for want thereof be committed to the house of correction,  
 of correction, or other county gaol or prison, for any &c. and the  
 time not exceeding three months nor less than one



A. D. 1714. month, there to be kept to hard labour, and suffer such  
 nets, &c. to be destroyed, other corporal punishment as the said justice or justices,  
 upon consideration of the circumstances of such offence,  
 shall think fit; and the said justice or justices of the  
 peace, before whom the person so offending shall be  
 convicted, shall order such nets, engines and devices,  
 made use of in taking such fish, to be seized and imme-  
 diately cut in pieces, or otherwise destroyed in his or  
 their presence, and shall also cause such banks, dams,  
 hedges or stanks, made or erected across the said river,  
 to be demolished and removed at the charges of such of-  
 fender, such charges if not paid down on conviction, to  
 be levied in the same manner as the said sum of five  
 pounds is appointed to be levied. (*Altered by 23 Geo.*  
*2. c. 26. s. 7.*)

and banks,  
 &c. removed  
 at the  
 charges of  
 the offender.

‘ XV. And whereas several fishmongers of London,  
 ‘ and other cities and towns, by themselves, or their  
 ‘ agents, frequently buy and contract with the fishermen  
 ‘ using the said rivers of Severn, Dee, Wye, Teame,  
 ‘ Were, Tees, Ribble, Mersey, Dun, Air, Ouze, Swaile,  
 ‘ Calder, Wharf, Eure, Darwent, and Trent, or others  
 ‘ employed by them, for great quantities of salmon to  
 ‘ be taken in the said rivers, which gives great encou-  
 ‘ ragement to the taking salmon there of unsizeable  
 ‘ lengths, and at unseasonable times;’ be it therefore  
 further enacted, That no such salmon shall be sent to  
 London to such fishmongers, or their agents, that shall  
 weigh less than six pounds each fish; and every person  
 buying, selling, or sending any such salmon of less  
 weight than six pounds, who shall be convicted thereof  
 in manner as aforesaid, shall forfeit the sum of five  
 pounds for every such offence, besides the fish so to be  
 bought and sold; one moiety of the said sum and fish to  
 be paid and distributed to the informer or informers, and  
 the other moiety thereof to the poor of the parish where  
 such offence shall be committed; the said sum, if not

sending to  
 London from  
 the said ri-  
 vers, or buy-  
 ing, &c. any  
 salmon less  
 than six  
 pounds  
 weight each,  
 forfeits 5*l*.

paid upon conviction, to be levied by distress and sale A. D. 1714.  
of the offender's goods and chattels, by warrant under to be levied  
the hand and seal of the justice or justices of peace, be- by distress,  
fore whom he shall be convicted, as aforesaid, rendering and for want,  
the overplus, if any be, over and above the charges of to be com-  
such distress, to the owner; and in default of sufficient mitted for  
distress, the offender shall be committed by such justice 3 months.  
or justices to the house of correction, or other county  
gaol or prison, there to be kept to hard labour for the  
space of three months, unless the said forfeiture shall be  
in the mean time paid.

XVI. Provided, That where any offender in the said Offenders  
rivers, or in any of them, shall be punished by force punished by  
of this act, he shall not be prosecuted, nor incur the this act, shall  
penalty of any other law or statute for the same of- not incur the  
fence. penalty of  
any other  
law.

XVII. Provided also, and it is hereby enacted, That Appeal.  
all persons who shall think themselves aggrieved by any  
judgment of any justice or justices of the peace, in any  
of the cases aforesaid, may appeal to the justices of the  
peace of the county, city, or place where such judgment  
shall be given, at their next general quarter sessions, who  
are hereby impowered to hear and finally determine the  
same.

XVIII. Provided, That this act, or any thing herein The owners  
contained, shall not extend, or be construed to extend, to of ancient  
any ancient wears or locks upon any rivers; but that it wears and  
shall and may be lawful for the proprietors or owners locks may re-  
thereof to repair, maintain, rebuild, remove, or take pair them,  
down any of the said wears or locks, as they might have &c.  
done in case this act had not been made. (Continued by  
23 Geo. 2. c. 26.)

A. D. 1716.

3 GEO. 1. C. 11. A. D. 1716.

AN ACT TO EXPLAIN AND AMEND SEVERAL LAWS  
THEREIN MENTIONED, FOR THE BETTER PRESERVA-  
TION OF THE GAME.

5 Ann. c. 14.  
and

‘ 1. Whereas by an act made in the fifth year of the  
‘ reign of her late majesty Queen Anne, intituled, “ an  
‘ act for the better preservation of the game,” it is en-  
‘ acted, that it shall and may be lawful for any lord or  
‘ lady of his or her respective lordship or manor, by  
‘ writing under his or her hand and seal, to impower  
‘ his or her game-keeper or game-keepers, upon his or  
‘ her own lordship or manor, to kill hare, pheasant,  
‘ partridge, or any other game whatsoever: which  
‘ power of appointing several game-keepers in the same  
‘ manor with power to kill game, was found by expe-  
‘ rience to tend very much to the destruction of the  
‘ game of this kingdom: for the preventing whereof,  
‘ by one other act of the ninth year of the reign of her

9 Ann. c. 25.

‘ said late majesty Queen Anne, intituled, “ an act for  
‘ making the act of the fifth year of her majesty’s reign,  
‘ for the better preservation of the game, perpetual, and  
‘ for making the same more effectual,” it was enacted,  
‘ that no lord or lady of any manor shall make, con-  
‘ stitute, or appoint above one person to be a game-  
‘ keeper within any one manor, with power or authority  
‘ to kill or destroy the game thereof; and that the name  
‘ of such person so to be authorized to kill the game  
‘ shall from time to time be entered with the clerk of  
‘ the peace of the county, riding, or division wherein  
‘ such manor does lie, which power of appointing a  
‘ game-keeper so to be entered as aforesaid, was mani-  
‘ festly designed to no other intent or purpose what-  
‘ soever, but that any lord or lady might appoint such  
‘ person as he or she should think proper to kill the



' game upon his or her own lordship or manor, for the A. D. 1716.  
 ' sole and proper use of the said lord or lady; such  
 ' game-keeper being expressly restrained by the said  
 ' first-recited act from selling or disposing of any game  
 ' to any person or persons whatsoever, without the con-  
 ' sent or knowledge of the said lord or lady of such  
 ' manor or manors that had given such power and au-  
 ' thority as aforesaid: and whereas under colour and  
 ' pretence of the said power and authority to kill or  
 ' take game for the use of the lords or ladies of any  
 ' manor, it is become usual and frequent in several parts  
 ' of the kingdom, for lords and ladies of manors to  
 ' grant powers and deputations to the farmers, tenants,  
 ' and occupiers of the lands and estates lying within the  
 ' precincts of their respective manors, to be game-  
 ' keepers, with power to kill and destroy the game;  
 ' which practice is a very great abuse of the powers in-  
 ' tended by the said acts to be granted, and manifestly  
 ' tends very much to the destruction of the game of this  
 ' kingdom: for remedy whereof, be it enacted by the  
 king's most excellent majesty, by and with the advice  
 and consent of the lords spiritual and temporal, and  
 commons, in this present parliament assembled, and by  
 the authority of the same, That from and after the tenth  
 day of July, one thousand seven hundred and seventeen,  
 no lord or lady of any manor shall make, constitute, or  
 appoint any person to be a game-keeper, with power and  
 authority to take and kill hare, pheasant, partridge, or  
 any other game whatsoever, unless such person be qua-  
 lified by the laws of this realm so to do, or unless such  
 person be truly and properly a servant to the said lord  
 or lady, or such person be immediately employed and  
 appointed to take and kill the game for the sole use or  
 benefit of the said lord or lady, and not otherwise; and  
 that no lord or lady of any manor shall authorize or  
 qualify any person or persons whatsoever, not being

No lord of a  
 manor shall  
 appoint any  
 game-keeper,  
 with power  
 to kill the  
 game, except  
 he be quali-  
 fied so to do,  
 or be a ser-  
 vant, &c.



A. D. 1716. qualified by the laws of this realm so to do, to take or kill any hare, pheasant, partridge, or other game whatsoever, or to keep or use any greyhound, setting-dogs, lays, lurchers, guns, tunnels, or any other engine to kill and destroy the game; and that any person or persons whatsoever, not being qualified by the laws so to do, or not being truly and properly a servant of any lord or lady of a manor, or not immediately employed and appointed to take and kill the game for the sole use or immediate benefit of the said lord or lady, who, under colour or pretence of any power or authority, deputation, or qualification to him granted by any lord or lady of a manor, shall take or kill any hare, pheasant, partridge, or other game whatsoever, or shall keep or use any greyhounds, setting-dogs, lays, lurchers, guns, tunnels, or any other engine to kill and destroy the game, being thereof legally convicted, shall, for every such offence, incur such forfeitures, pains and penalties as are appointed to be inflicted by the said recited acts of the fifth and ninth years of the reign of the late Queen Anne; such forfeitures to be recovered by such means, and in such manner and form, and within such time, and to such uses, as are prescribed by the said recited acts; any thing in the said acts, or in any other law or statutes to the contrary thereof in any wise notwithstanding.

The recited  
acts shall re-  
main in  
force.

II. And be it further enacted by the authority aforesaid, That the said recited acts of the fifth and ninth years of the reign of her said late majesty Queen Anne, and all other laws now in force for the better preservation of the game, and all matters, powers and things therein contained, not hereby altered and repealed, shall continue, remain, and be in full force.

A. D. 1718.

5 GEO. 2. c. 15. A. D. 1718.

AN ACT FOR MAKING MORE EFFECTUAL AN ACT OF THE  
THIRD AND FOURTH YEARS OF THE REIGN OF KING  
WILLIAM AND QUEEN MARY, INTITULED, 'AN ACT  
FOR THE MORE EFFECTUAL DISCOVERY AND PUNISH-  
MENT OF DEER-STEALERS.'

'I. Whereas divers idle and disorderly persons who  
'have been duly convicted for unlawfully coursing,  
'hunting, killing or taking away deer, upon the statute  
'made in the third and fourth years of the reign of the  
'late King William and Queen Mary, for the more  
'effectual discovery and punishment of deer-stealers,  
'have procured writs of certiorari to remove such con-  
'victions into superior courts at Westminster, purely to  
'avoid the penalties of the said statute; whereby the  
'party or parties convicted are only obliged to give  
'security to the person or persons prosecuting, for the  
'payment of their costs and damages; and there being  
'no provision made for securing the forfeitures incurred  
'for the offence of the imprisonment of the offenders,  
'although such convictions should be confirmed by the  
'said courts, the said offenders have opportunity to  
'conceal their effects, and withdraw their persons from  
'punishment; and the justice intended by the said act  
'hath been evaded, and loose and wicked persons  
'greatly encouraged to follow such evil practices:' for  
the prevention whereof, be it enacted by the king's most  
excellent majesty, by and with the advice and consent  
of the lords spiritual and temporal, and commons, in this  
present parliament assembled, and by the authority of  
the same, That no certiorari shall be allowed to remove  
any conviction made, or other proceedings of, for, or con-  
cerning any matter or thing in the said statute, unless  
the party or parties convicted shall, before the allowance

No certiorari  
allowed to  
remove any  
conviction  
against the  
recited act.

A. D. 1718. of such certiorari, and at the same time that security is  
 unless party given for the payment of the costs and damages to the  
 convicted prosecutor or prosecutors, become also bound to the  
 give security justice or justices of the peace, before whom such con-  
 to the justice viction was made, with such sufficient sureties as such  
 to prosecute justice or justices shall approve of, in the penalty of sixty  
 such writ pounds for each offence, with condition to prosecute such  
 with effect, writ of certiorari with effect, and to pay such justice or  
 &c. justices the forfeitures due by such conviction, to be  
 distributed as the said statute directs, or to render the  
 person or persons convicted to such justice or justices  
 within one month next after such conviction shall be  
 confirmed, or a procedendo granted; and that in de-  
 fault thereof, it shall be lawful for the said justice or  
 justices, and all other persons whatsoever, to proceed to  
 the due execution of such conviction, in such manner  
 as if no certiorari had been awarded.

In default,  
 justice may  
 proceed to  
 execute con-  
 viction.

After confir-  
 mation of a  
 conviction,  
 the justice  
 may proceed  
 as if a proce-  
 dendo had  
 been granted.

II. And be it further enacted by the authority afore-  
 said, That after the confirmation of any conviction or  
 convictions upon the said statute by any of the said  
 superior courts, and delivering the rules to the said jus-  
 tice or justices, whereby such conviction or convictions  
 hath or have been so confirmed, it shall and may be  
 lawful for, and full power and authority is hereby given  
 to such justice or justices to proceed against the party or  
 parties convicted, in the same manner as if a procedendo  
 had been granted.

Persons sued  
 may plead  
 the general  
 issue, &c.

III. Provided always, and be it enacted by the au-  
 thority aforesaid, That if any person or persons shall be  
 sued or prosecuted for any matter or thing which he or they  
 shall do in pursuance of this act, or of the said statute  
 made in the third and fourth years of the reign of the late  
 King William and Queen Mary, it shall and may be  
 lawful to and for the person or persons so sued or pro-  
 secuted to plead the general issue, and give the special  
 matter in evidence; and if a verdict shall pass for the



defendant, or the plaintiff shall become nonsuit, or suffer a discontinuance, or if upon a demurrer judgment shall be given against the plaintiff, the defendant shall have and recover his treble costs, and have the like remedy for the same as any other defendant hath in any other case by law. A. D. 1718.

IV. And be it further enacted by the authority aforesaid, That all and every person and persons convicted, or who shall hereafter be convicted by virtue of the said statute, shall, before he or they shall be discharged out of custody, become bound to such person or persons against whom such offence was or shall be committed, in the sum of fifty pounds, with condition for his or their future good behaviour, and that he or they shall not offend in like manner; and upon his or their failure or refusal to enter into such bond, that he or they shall be committed to the county gaol where such offence was or shall be done, until such bond shall be given; and that if such person or persons shall at any time after his or their becoming bound, as aforesaid, be convicted for any matter or thing in the said statute, that then the said bond shall be deemed to be forfeited, and the penalty be recovered, with full costs of suit, in any of the courts at Westminster; which said penalties shall be distributed in the same manner as the forfeitures are by the said statute to be distributed, and the party or parties so convicted shall be likewise liable to the penalties and forfeitures in the said statute. By 5 Geo. 1. c. 28. such offenders are to be transported.

V. And whereas divers keepers of forests, chaces and parks, in breach of the trust reposed in them, have been in confederacy with deer-stealers, whereby they have been greatly encouraged: be it therefore enacted by the authority aforesaid, That if any keeper or keepers, or other officer of any forest, chace, purlieu, paddock, wood, park, or place where deer are usually

Persons convicted to become bound to be of good behaviour.

On refusal, to be committed.

If convicted after, bond forfeited, &c.

Keeper or other officer of any forest, &c. convicted of killing any deer without the owner's consent, forfeit 50*l.* for each deer;



A. D. 1713.  
to be levied  
by distress;  
and for want  
thereof to be  
imprisoned  
three years,  
and set in  
the pillory.

kept, shall be convicted upon the said statute for killing or taking away any red or fallow deer, or being aiding or assisting therein, without the consent of the owner or persons chiefly intrusted with the custody of such forest, chase, purlieu, paddock, wood, park, or place where such deer shall be killed or taken away, that then such keeper or keepers, or other officer, being so convicted, shall forfeit the sum of fifty pounds for each deer so killed or taken away, to be levied by way of distress upon his or their goods and chattels, to be distributed as the forfeitures in the said statute are to be distributed; and for want of such distress, that then he or they shall suffer imprisonment for three years without bail or mainprize, and be set in the pillory for two hours on some market-day in the next adjoining town to the place where the offence was committed, by the chief officer or officers of such market-town, or by his or their under officer or under officers.

Persons con-  
victed of pul-  
ling down  
pales, &c. of  
any park,  
&c. subject  
to the pe-  
nalties of 3  
and 4 W. and  
c. 10.

‘ VI. And whereas by the said statute of the third and fourth years of King William and Queen Mary, such persons are only to be punished with three months imprisonment, who do in the night-time pull down or destroy the pales or walls of any park, forest, or other ground where deer are kept, which hath been found ineffectual to prevent mischiefs of that nature:’ be it therefore enacted by the authority aforesaid, That if any person or persons shall at any time pull down or destroy, or cause to be pulled down or destroyed, the pale or pales, or walls of any park, forest, chase, purlieu, paddock, wood, or other ground inclosed, where any red or fallow deer shall be then kept, without the consent of the owner or the person chiefly intrusted with the custody thereof, that such person or persons so offending, and being convicted thereof by confession, or by the oath of one or more credible witness or witnesses before one or more justice or justices of the peace of the same

county wherein the offence shall be committed, shall be A. D. 1718.  
 subject unto the forfeitures and penalties by the said  
 statute inflicted for the killing of any one deer, in the  
 same manner as if he or they had been thereof con-  
 victed according to the said statute.

5 GEORGE I. C. 28. A. D. 1718.

AN ACT FOR THE FURTHER PUNISHMENT OF SUCH  
 PERSONS AS SHALL UNLAWFULLY KILL OR DE-  
 STROY DEER IN PARKS, PADDOCKS, OR OTHER IN-  
 CLOSED GROUNDS.

‘ I. Whereas in defiance of the laws already in be-  
 ‘ ing, several disorderly and riotous persons have of  
 ‘ late in great numbers, with armed force, entered parks  
 ‘ and other inclosed grounds where deer are kept,  
 ‘ whereby bloodshed and murder hath frequently hap-  
 ‘ pened, and great mischiefs may ensue :’ for the pre-  
 venting and punishment of which offences, be it en-  
 acted by the king’s most excellent majesty, by and with  
 the advice and consent of the lords spiritual and tem-  
 poral, and commons, in this present parliament assem-  
 bled, That if any person or persons shall, from and after  
 the first day of May one thousand seven hundred and  
 nineteen, enter into any park, paddock or other inclosed  
 ground where deer are usually kept, and wilfully wound  
 or kill any red or fallow deer there, without the consent  
 of the owner or owners of such park, paddock or in-  
 closed ground, or of the person or persons entrusted  
 with the care or custody of such park, paddock or in-  
 closed ground, or shall be aiding or assisting in the com-  
 mitting of any such offence, and being indicted for any  
 such offence before any judge or justices of gaol deli-  
 very for the county wherein such park, paddock or in-

Persons con-  
 victed of en-  
 tring into any  
 park, &c. and  
 killing or  
 wounding  
 any deer,  
 without con-  
 sent of the  
 owner, &c.  
 or aiding,  
 &c. shall be  
 transported  
 for seven  
 years.

A. D. 1718. closed ground shall lie, and shall upon such indictment be by verdict, or his own confession, convicted of any such offence, the person or persons so convicted as aforesaid shall be sent, as soon as conveniently may be, to some of his majesty's plantations in America for the space of seven years; and the court before whom such offender or offenders shall be convicted, or any subsequent court held at the same place with like authority as the former, shall have power to convey, transfer, and make over such offenders by order of court, to the use of any person or persons who shall contract for the performance of such transportation.

This act shall not repeal, &c. any former law against deer-stealers.

II. Provided, That nothing herein contained shall be expounded, deemed or taken to repeal, alter or make void any former law or statute now in being, made or intended for the punishment of deer-stealers: and provided also, That where any offender shall be punished by force of this act, and according to the true intent and meaning thereof, he shall not be prosecuted nor incur any penalty for the same offence by force of any other law or statute whatsoever.

A. D. 1721.

8 GEORGE I. C. 19. A. D. 1721. *Ap*

AN ACT FOR THE BETTER RECOVERY OF THE PENALTIES INFLICTED UPON PERSONS WHO DESTROY THE GAME.

Wheresoever any person shall be liable to any pecuniary penalty; any other person may recover the penalty by information before a justice, or

I. For rendering more effectual the laws now in being for the better preservation of the game, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That wheresoever any person shall, for any offence to be hereafter committed against any law now in being for the better preservation

of the game.. be liable or subject to pay any pecuniary A. D. 1721.  
 penalty or sum of money upon conviction before any sue for the  
 justice or justices of the peace, it shall and may be law- same, &c.  
 ful for any other person whatsoever, either to proceed See 2 East's  
 to recover the said penalty, by information and convic- Rep. 333.  
 tion before a justice or justices of the peace, in such  
 manner as is in such law contained, or to sue for the  
 same by action of debt, or on the case, bill, plaint or in-  
 formation in any of his majesty's courts of record,  
 wherein no essoin, protection, wager of law, or more  
 than one imparlance shall be allowed, and wherein the  
 plaintiff, if he recovers, shall likewise have his double  
 costs.

II. Provided, That all suits and actions to be brought Actions to be  
 by force of this act shall be brought before the end of brought be-  
 the next term after the offence committed ; and that no fore the end  
 offender against any of the laws now in being for the of the term  
 better preservation of the game shall be prosecuted for after the of-  
 the same offence, both by the way prescribed by this fence com-  
 law, and by the way prescribed by any of the said mitted.  
 former laws ; and that in case of any second prosecution, Altered by  
 the person so doubly prosecuted may plead in his de- 2 Geo.3. c.19.  
 fence the former prosecution pending, or the conviction s. 5.  
 or judgment thereupon had. See 2 East's  
Rep. 333.



A. D. 1722.

9 GEORGE 1. c. 22. A. D. 1722.

AN ACT FOR THE MORE EFFECTUAL PUNISHING  
WICKED AND EVIL-DISPOSED PERSONS GOING  
ARMED IN DISGUISE, AND DOING INJURIES AND  
VIOLENCES TO THE PERSONS AND PROPERTIES  
OF HIS MAJESTY'S SUBJECTS, AND FOR THE  
MORE SPEEDY BRINGING THE OFFENDERS TO  
JUSTICE.

Continued  
by 12 Geo. 1.  
c. 30. ex-  
plained and  
amended by  
17 Geo. 2.  
c. 15. and  
made perpet-  
ual by  
31 Geo. 2.  
c. 42.  
Virtually re-  
pealed as to  
deer-stealing  
by 16 Geo. 3.  
c. 30  
See 2 East's  
Pl. Cr. 609.

Offences  
against this  
act are ex-  
cepted out of  
the general  
pardon,  
20 Geo. 2.  
c. 52.

‘ I. Whereas several ill-designing and disorderly persons have of late associated themselves under the name of Black, and entered into confederacies to support and assist one another in stealing and destroying of deer, robbing of warrens and fish-ponds, cutting down plantations and trees, and other illegal practices, and have, in great numbers, armed with swords, fire-arms, and other offensive weapons, several of them with their faces blacked, or in disguised habits, unlawfully hunted in forests belonging to his majesty, and in the parks of divers of his majesty's subjects, and destroyed, killed, and carried away the deer, robbed warrens, rivers and fish-ponds, and cut down plantations of trees: and have likewise solicited several of his majesty's subjects, with promises of money, or other rewards, to join with them, and have sent letters in fictitious names, to several persons, demanding venison and money, and threatening some great violence, if such their unlawful demands should be refused, or if they should be interrupted in, or prosecuted for such their wicked practices, and have actually done great damage to several persons, who have either refused to comply with such demands, or have endeavoured to bring them to justice, to the great terror of his majes-

'ty's peaceable subjects:' for the preventing which A. D. 1722.  
 wicked and unlawful practices, be it enacted by the  
 king's most excellent majesty, by and with the advice  
 and consent of the lords spiritual and temporal, and Persons dis-  
 commons, in parliament assembled, and by the authority, guised and in  
 of the same, That if any person or persons, from and arms appear  
 after the first day of June, in the year of our Lord one ing in forest,  
 thousand seven hundred and twenty-three, being armed &c. and kil-  
 with swords, fire-arms, or other offensive weapons, and ling deer, &c.  
 having his or their faces blacked, or being otherwise dis- deemed  
 guised, shall appear in any forest, chase, park, paddock, felons,  
 or grounds inclosed with any wall, pale, or other fence,  
 wherein any deer have been or shall be usually kept, or  
 in any warren or place where hares or conies have been  
 or shall be usually kept, or in any high road, open  
 heath, common or down, or shall unlawfully and wilfully  
 hunt, wound, kill, destroy, or *steal* any red or fallow Virtually re-  
 deer, or unlawfully rob any warren or place where co- pealed as to  
 nies or hares are usually kept, or shall unlawfully steal by 16 Geo. 3.  
 or take away any fish out of any river or pond; or if c. 30.  
 any person or persons, from and after the said first day See 2 East's  
 of June shall unlawfully and wilfully hunt, wound, kill, Pl. Cr. 609.  
 destroy or steal any red or fallow deer, fed or kept in any  
 places in any of his majesty's forests or chases, which  
 are or shall be inclosed with pales, rails, or other fences,  
 or in any park, paddock, or grounds inclosed, where  
 deer have been or shall be usually kept; or shall unlaw-  
 fully and maliciously break down the head or mound of  
 any fish-pond, whereby the fish shall be lost or de-  
 stroyed, or shall unlawfully and maliciously kill, maim  
 or wound any cattle, or cut down or otherwise destroy  
 any trees planted in any avenue, or growing in any  
 garden, orchard or plantation, for ornament, shelter or  
 profit; or shall set fire to any house, barn or out-house,  
 or to any hovel, cock, mow, or stack of corn, straw, hay

A. D. 1722.  
Sending letters without  
a name. &c.  
and demanding  
money,  
&c. felony.  
43 Geo. 3.  
c. 58.

or wood ; or shall wilfully and maliciously shoot at any person in any dwelling-house, or other place ; or shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing ; or shall forcibly rescue any person being lawfully in custody of any officer or other person, for any the offences before-mentioned ; or if any person or persons shall, by gift or promise of money, or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act ; every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

such persons  
when to sur-  
render them-  
selves, &c.

‘ II. And whereas notwithstanding the laws now in force against the illegal practices above-mentioned, and his majesty's royal proclamation on the second day of February, which was in the year of our Lord one thousand seven hundred and twenty-two, notifying the same, many wicked and evil-disposed persons have, in open defiance thereof, been guilty of several of the offences before-mentioned, to the great disturbance of the publick peace, and damage of divers of his majesty's good subjects ;’ it is hereby enacted by the authority aforesaid, That all and every person and persons who since the second day of February, in the year of our Lord one thousand seven hundred and twenty-two, have committed or been guilty of any of the offences aforesaid, who shall not surrender him, her, or themselves, before the twenty-fourth day of July, in the year of our Lord, one thousand seven hundred and twenty-three, to any of the justices of his majesty's court of king's bench, or to any one of his majesty's justices of the peace in and for the county where he, she, or they did commit such offence or offences, and voluntarily

make a full confession thereof to such justice, and a true A. D. 1792. discovery upon his, her, or their oath or oaths, of the persons who were his, her, or their accomplices in any of the said offences, by giving a true account of their names, occupations, and places of abode, and to the best of his, her, or their knowledge or belief discover where they may be found, in order to be brought to justice, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

III. Provided nevertheless, That all and every person and persons, who have been guilty of any the offences aforesaid, and shall not be in lawful custody for such offence on the said first day of June, and shall surrender him, her, or themselves, on or before the said twenty-fourth day of July as aforesaid, and shall make such confession and discovery as aforesaid, shall by virtue of this act be pardoned, acquitted and discharged of and from the offences so by him, her, or them confessed as aforesaid; any thing herein contained to the contrary in any wise notwithstanding.

IV. And for the more easy and speedy bringing the offenders against this act to justice, be it further enacted by the authority aforesaid, That if any person or persons shall be charged with being guilty of any of the offences aforesaid, before any two or more of his majesty's justices of the peace of the county where such offence or offences were or shall be committed, by information of one or more credible person or persons upon oath by him or them to be subscribed; such justices before whom such information shall be made as aforesaid, shall forthwith certify under their hands and seals, and return such information to one of the principal secretaries of state of his majesty, his heirs or successors, who is hereby required to lay the same, as soon as conveniently may be, Justices to return information to a secretary of state,



A. D. 1722. before his majesty, his heirs or successors, in his or their privy council; whereupon it shall and may be lawful for his majesty, his heirs or successors, to make his or their order in his or their said privy council, thereby requiring and commanding such offender or offenders to surrender him or themselves, within the space of forty days, to any of his majesty's justices of the court of king's bench, or to any one of his majesty's justices of the peace, to the end that he or they may be forthcoming, to answer the offence or offences wherewith he or they shall so stand charged, according to the due course of law, which order shall be printed and published in the next London Gazette, and shall be forthwith transmitted to the sheriff of the county where the offence shall be committed, and shall, within six days after the receipt thereof, be proclaimed by him, or his officers, between the hours of ten in the morning, and two in the afternoon, in the market-places, upon the respective market-days of two market-towns in the same county, near the place where such offence shall have been committed, and a true copy of such order shall be affixed upon some public place in such market-towns; and in case such offender or offenders shall not surrender him or themselves pursuant to such order of his majesty, his heirs or successors, to be made in council as aforesaid, he or they, so neglecting or refusing to surrender him or themselves as aforesaid, shall, from the day appointed for his or their surrender as aforesaid, be adjudged, deemed and taken to be convicted and attainted of felony, and shall suffer pains of death as in case of a person convicted and attainted by verdict and judgment of felony, without benefit of clergy: and that it shall be lawful to and for the court of king's bench, or the justices of oyer and terminer, or general gaol delivery for the county where the offence is sworn in such information

Persons not surrendering themselves pursuant to such order, deemed to be convicted, &c.

to have been committed, upon producing to them such A. D. 1722. order in council, under seal of the said council, to award execution against such offender and offenders, in such manner, as if he or they had been convicted and attainted in the said court of king's bench, or before such justices of oyer and terminer, or general gaol delivery respectively.

V. And be it enacted by the authority aforesaid, That <sup>Persons a-</sup>all and every person and persons, who shall, after the <sup>betting them,</sup> time appointed as aforesaid for the surrender of any <sup>&c. deemed</sup> person or persons, so charged upon oath with any the <sup>felons.</sup> offences aforesaid, be expired, conceal, aid, abet or succour such person or persons, knowing him or them to have been so charged as aforesaid, and to have been required to surrender him or themselves by such order or orders as aforesaid, being lawfully convicted thereof, shall be guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

VI. Provided nevertheless, and it is hereby declared and enacted, That nothing herein contained shall be construed to prevent or hinder any judge, justice of the peace, magistrate, officer or minister of justice whatsoever from taking, apprehending and securing such offender or offenders, against whom such information shall be given, and for requiring whose surrender such order in council shall be made as aforesaid, by the ordinary course of law; and in case such offender or offenders, against whom such information, and for requiring whose surrender such order in council shall be made as aforesaid, shall be taken and secured in order to be brought to justice, before the time shall be expired <sup>Offenders</sup> within the <sup>apprehended</sup> time limited <sup>by order of</sup> council, shall <sup>be tried ac-</sup> according to <sup>law.</sup> within which he or they shall be required to surrender him or themselves by such order in council as aforesaid, that then in such case no further proceeding shall be had upon such order made in council against him or

A. D. 1722. them so taken and secured as aforesaid, but he or they shall be brought to trial by due course of law; any thing herein-before contained to the contrary in any wise notwithstanding.

Justices may  
issue war-  
rants to  
search for  
stolen veni-  
son.

XI. And for the better and more effectuai discovery of the offenders above-mentioned, and bringing them to justice, be it enacted by the authority aforesaid, That it shall and may be lawful to and for any justice of the peace to issue his warrant to any constable, headborough, or other peace-officer, thereby authorising such constable, headborough, or other peace-officer, to enter into any house, in order to search for venison stolen or unlawfully taken, contrary to the several statutes against deer-stealers, in such manner as by the laws of this realm such justice of the peace may issue his warrant to search for stolen goods.

Persons kill-  
ed or wound-  
ed in appre-  
hending of-  
fenders, to be  
rewarded.

XII. And be it further enacted by the authority aforesaid, That if any person or persons shall apprehend, or cause to be convicted, any of the offenders above-mentioned, and shall be killed, or wounded so as to lose an eye or the use of any limb, in apprehending or securing, or endeavouring to apprehend or secure, any of the offenders above-mentioned, upon proof thereof made at the general quarter-sessions of the peace for the county, liberty, division or place where the offence was or shall be committed, or the party killed, or receive such wound, by the person or persons so apprehending and causing the said offender to be convicted, or the person or persons so wounded, or the executors or administrators of the party killed, the justices of the said sessions shall give a certificate thereof to such person or persons so wounded, or to the executors or administrators of the person or persons so killed, by which he or they shall be entitled to receive of the sheriff of the said county the sum of fifty pounds, to be allowed the



said sheriff in passing his accounts in the exchequer ; A. D. 1722.  
 which sum of fifty pounds the said sheriff is hereby re-  
 quired to pay within thirty days from the day on which  
 the said certificate shall be produced and shewn to him,  
 under the penalty of forfeiting the sum of ten pounds to  
 the said person or persons to whom such certificate is  
 given, for which said sum of ten pounds, as well as the  
 said sum of fifty pounds, such person may and is here-  
 by authorized to bring an action upon the case against  
 such sheriff, as for money had and received to his or  
 their use.

‘ XIII. And whereas the shortness of the time within <sup>3 & 4 W. & M. c. 10.</sup>  
 ‘ which prosecutions for offences against the statute <sup>Prosecutions</sup>  
 ‘ made in the third and fourth years of the reign of <sup>may be com-</sup>  
 ‘ their late majesties King William and Queen Mary, <sup>menced with-</sup>  
 ‘ intituled, “ an act for the more effectual discovery <sup>in three years</sup>  
 ‘ and punishment of deer-stealers,” are limited to be <sup>after offence</sup>  
 ‘ commenced, has been a great encouragement to of- <sup>committed,</sup>  
 ‘ fenders ;’ be it therefore enacted by the authority  
 aforesaid, That any prosecution for any offence against  
 the said statute shall or may be commenced within three  
 years from the time of the offence committed, but not  
 after.

XIV. And for the better and more impartial trial of <sup>Such of-</sup>  
 any indictment or information, which shall be found, <sup>fences may</sup>  
 commenced or prosecuted for any of the offences com- <sup>be tried in</sup>  
 mitted against this act, be it enacted by the authority <sup>any county.</sup>  
 aforesaid, That every offence that shall be done or com-  
 mitted contrary to this act, shall and may be enquired  
 of, examined, tried and determined in any county  
 within that part of the kingdom of Great Britain called  
 England, in such manner and form as if the fact had been  
 therein committed ; provided, that no attainder for any <sup>Attainder</sup>  
 of the offences made felony by virtue of this act, shall <sup>not to work</sup>  
 make or work any corruption of blood, loss of dower, or <sup>corruption of</sup>  
 forfeiture of lands or tenements, goods or chattels. <sup>blood, &c.</sup>



A. D. 1732. XV. And be it further enacted by the authority  
 This act  
 where to be  
 read. aforesaid, That this act shall be openly read at every  
 quarter sessions, and at every leet or law-day.

3 & 4 W. &  
 M. c. 10.  
 See farther  
 10 Geo. 2.  
 c. 25.

XVII. And be it further enacted by the authority  
 aforesaid, That if any venison, or skin of any deer,  
 shall be found in the custody of any person or per-  
 sons, and it shall appear that such person or persons  
 bought such venison or skin of any one, who might be  
 justly suspected to have unlawfully come by the same,  
 and does not produce the party of whom he bought it,  
 or prove upon oath the name and place of abode of such  
 party, that then the person or persons who bought  
 the same shall be convicted of such offence, by any one  
 or more justice or justices of the peace, and shall be  
 subject to the penalties inflicted for killing a deer, in  
 and by the statute made in the third and fourth year of  
 the reign of their late majesties King William and  
 Queen Mary, intituled, “ an act for the more effec-  
 tual discovery and punishment of deer-stealers ”

A. D. 1736.

9 GEO. 2. C. 33. A. D. 1736.

AN ACT TO RENDER THE LAW MORE EFFECTUAL FOR  
 PREVENTING THE IMPORTATION OF FRESH FISH  
 TAKEN BY FOREIGNERS, AND TO EXPLAIN SO MUCH  
 OF AN ACT MADE IN THE THIRTEENTH AND FOUR-  
 TEENTH YEARS OF THE REIGN OF KING CHARLES  
 THE SECOND, AS RELATES TO SHIPS EXPORTING  
 FISH TO THE PORTS OF THE MEDITERRANEAN SEA,  
 AND FOR THE BETTER PRESERVATION OF THE FRY  
 OF LOBSTERS ON THE COASTS OF SCOTLAND.

‘ Whereas by an act made in the first year of the <sup>1 Gro. 1. c. 13.</sup>  
 ‘ reign of his late majesty King George the First, inti-  
 ‘ tuled, “ an act for the better preventing fresh fish  
 ‘ taken by foreigners being imported into this king-  
 ‘ dom, and for the preservation of the fry of fish, and  
 ‘ for the giving leave to import lobsters and turbets  
 ‘ in foreign bottoms, and for the better preservation of  
 ‘ salmon within several rivers in that part of this  
 ‘ kingdom called England,” it is (amongst other  
 ‘ things) enacted, that from and after the twenty-  
 ‘ ninth day of September, one thousand seven hundred  
 ‘ and fifteen, no herring, cod, pilchards, salmon, or  
 ‘ ling, fresh or salted, dried or bloated, nor any grill,  
 ‘ mackrel, whiting, haddock, sprats, coal-fish, gull-  
 ‘ fish, congers, or any sort of flat fish, nor any other  
 ‘ sort of fresh fish whatsoever, shall be imported into,  
 ‘ sold, or exposed to sale, in that part of this kingdom  
 ‘ called England, which shall be taken by, bought of,  
 ‘ or received from any foreigner or foreigners, or out of  
 ‘ any stranger or strangers bottom (except protestant  
 ‘ strangers inhabiting within this kingdom) nor shall  
 ‘ any person or persons give or exchange any goods or  
 ‘ other things in exchange for any sort of fish so taken  
 ‘ as aforesaid: and it is thereby further enacted, that

A. D. 1736. ‘ every master or commander for the time being of any  
 ‘ smack, hoy, yager, boat or other vessel in which any  
 ‘ fish shall be imported or brought to shore contrary to  
 ‘ the true intent and meaning of the said act, and being  
 ‘ thereof lawfully convicted in the manner thereby di-  
 ‘ rected, shall forfeit for every such offence the sum  
 ‘ therein mentioned, to be levied and disposed of in such  
 ‘ manner as by the said act is directed, or in default of  
 ‘ payment of the said sum or sufficient distress, shall be  
 ‘ committed to the common gaol as in the said act is  
 ‘ directed : and whereas it is by the said act provided,  
 ‘ that no person shall suffer any punishment for any  
 ‘ offence committed against the said act, unless the pro-  
 ‘ secution for the same be commenced within one month  
 ‘ after such offence committed : and whereas the pe-  
 ‘ nalties inflicted by the recited clause of the said act  
 ‘ herein-before recited, are not sufficient to deter per-  
 ‘ sons from offending against the same : and whereas  
 ‘ by reason of the short time limited for prosecution of  
 ‘ offences committed against the said act, many offenders  
 ‘ against the same escape punishment ;’ be it therefore  
 enacted by the king’s most excellent majesty, by and with  
 the advice and consent of the lords spiritual and tempo-  
 ral, and commons, in this present parliament assembled,

After 24th of  
 June, 1736,  
 every person  
 importing  
 fish contrary  
 to the act  
 1 Geo. 1. to  
 forfeit 100/.

and by the authority of the same, That from and after  
 the twenty-fourth day of June, which shall be in the  
 the year of our Lord one thousand seven hundred and  
 thirty-six, every person offending against the clause of  
 the said act herein-before recited, shall forfeit and pay  
 the sum of one hundred pounds, to be recovered by any  
 informer in any of the courts in Westminster-hall, and  
 to be distributed and disposed of in the manner follow-  
 ing ; that is to say, one moiety thereof to the informer,  
 and the other moiety thereof to the poor of the parish  
 where such offence shall be committed ; and the master  
 or commander of every smack, hoy, yager, boat, ship,

and the mas-  
 ter of the  
 vessel 50/.

or other vessel in which any fish shall be imported or A. D. 1736.  
brought to shore, contrary to the true intent and meaning of the said act herein-before recited, and of this present act, shall forfeit and pay the sum of fifty pounds, to be recovered by any informer, and to be disposed of in like manner as before recited.

II. Provided always, That no person shall incur any penalty or forfeiture for any offence committed against this act, unless the prosecution for the same be commenced within twelve months after such offence committed. Prosecution  
in twelve  
months.

‘ III. And whereas by an act of parliament made in  
‘ the thirteenth and fourteenth year of the reign of King  
‘ Charles the Second, intituled, “ an act for preventing  
‘ frauds and regulating abuses in his majesty’s  
‘ customs,” it is for the better increase of good and  
‘ serviceable shipping, and securing the public trade and  
‘ commerce enacted, that all and every merchant or other  
‘ person, that should, after the twenty-ninth day of September,  
‘ one thousand six hundred and sixty-two, export any goods or  
‘ merchandizes from any port of this kingdom capable of a ship or  
‘ vessel of two hundred tons upon an ordinary full sea, to any port  
‘ or place of the Mediterranean sea beyond the port of Malaga, or  
‘ import any goods or merchandize from the ports or places  
‘ aforesaid to any port of this kingdom, in any ship or vessel that  
‘ should not have two decks, and should carry less than sixteen  
‘ pieces of ordnance mounted, together with two men for each gun,  
‘ and other ammunition proportionably, should pay a duty of one  
‘ *per centum* for all and every the wares so exported or imported,  
‘ over and above the rates and duties of subsidy of tonnage and  
‘ poundage otherwise due and payable for the same ; and in the same act it  
‘ is provided, that it should and might be lawful to export from  
‘ any of his said majesty’s dominions fish,  
‘ into any of the ports of the Mediterranean sea afore-



A. D. 1736. ‘ said, in any English ship or vessel whatsoever, pro-  
 ‘ vided one moiety of her full loading should be fish  
 ‘ only, and in such case to import any wares or mer-  
 ‘ chandizes in the same ship for that voyage, without  
 ‘ paying any other rates or duties for the same than were  
 ‘ then before accustomed : and whereas some doubts and  
 ‘ disputes have arisen, whether the exemption granted  
 ‘ by the said act in favour of any English ship or vessel,  
 ‘ whereof one moiety of her full loading should be fish  
 ‘ only, should be construed to extend to the benefit and  
 ‘ advantage of the owner or owners of such ship or  
 ‘ vessel, in case one moiety of her full loading should  
 ‘ consist of foreign fish :’ to prevent therefore the said  
 doubts and disputes for the future, and for the greater  
 encouragement of the British fisheries, be it further  
 enacted by the authority aforesaid, That no British  
 ship or vessel trading to any port or place of the Medi-  
 terranean sea, beyond the port of Malaga, in manner  
 aforesaid, shall be entitled to the benefit and advantage  
 of the exemption granted to such ship or vessel in the  
 said act, for or by reason that one moiety of the full  
 loading of such ship or vessel shall or may consist of  
 fish, unless such moiety of the full loading of such ship  
 or vessel do consist of fish taken and cured by his ma-  
 jesty’s subjects only.

A clause in  
 the act 13 &  
 14 Car. 2.  
 c. 11. ex-  
 plained.

‘ IV. And whereas the destroying the fry or spawn  
 ‘ of any fish is highly prejudicial, especially such fish  
 ‘ as do not wander, but keep about the coasts : and  
 ‘ whereas the principal time for the spawning of lobsters  
 ‘ is from the beginning of June to the first of September,  
 ‘ in which three months the lobsters crawl close to the  
 ‘ shore to leave their spawn in the chinks of the rocks,  
 ‘ and as much under the influence of the sun as pos-  
 ‘ sible ;’ be it therefore enacted by the authority afore-  
 said, That from and after the first day of June, one  
 thousand seven hundred and thirty-six, no fisherman or

other person or persons whatsoever shall with trunks, hoop-nets, or any other way, take, kill, or destroy any lobsters on the sea-coast of that part of Great Britain called Scotland, from the first day of June to the first day of September, yearly, under the penalties of five pounds sterling for each offence, to be recovered by any person who shall inform and sue for the same upon a summary complaint before any two or more of his majesty's justices of the peace of the shire on the coast where any such offence shall happen to be committed.

A. D. 1736.

Five pounds  
penalty on  
taking or  
killing lob-  
sters on the  
coast of Scot-  
land, be-  
tween June 1  
and Sept. 1,  
yearly.

10 GEO. 2. C. 32. A. D. 1737. *Rep.*

A. D. 1737.

AN ACT FOR CONTINUING 'AN ACT FOR THE MORE EFFECTUAL PUNISHING WICKED AND EVIL-DISPOSED PERSONS GOING ARMED IN DISGUISE, AND DOING INJURIES AND VIOLENCES TO THE PERSONS AND PROPERTIES OF HIS MAJESTY'S SUBJECTS, AND FOR THE MORE SPEEDY BRINGING THE OFFENDERS TO JUSTICE;' AND FOR CONTINUING TWO CLAUSES TO PREVENT THE CUTTING OR BREAKING DOWN THE BANK OF ANY RIVER OR SEA-BANK; AND TO PREVENT THE MALICIOUS CUTTING OF HOP-BINDS, CONTAINED IN AN ACT PASSED IN THE SIXTH YEAR OF HIS PRESENT MAJESTY'S REIGN; AND FOR THE MORE EFFECTUAL PUNISHMENT OF PERSONS REMOVING ANY MATERIALS USED FOR SECURING MARSH OR SEA WALLS, OR BANKS, AND OF PERSONS MALICIOUSLY SETTING ON FIRE ANY MINE, PIT, OR DELPH OF COAL, OR CANNEL COAL, AND OF PERSONS UNLAWFULLY HUNTING OR TAKING ANY RED OR FALLOW DEER IN FORESTS OR CHACES, OR BEATING OR WOUNDING KEEPERS, OR OTHER OFFICERS, IN FORESTS, CHACES, OR PARKS; AND FOR MORE EFFECTUALLY SECURING THE BREED OF WILD-FOWL.

'VII. And whereas several wicked and disorderly persons armed with fire-arms, swords, staves, flails,

A. D. 1737. ‘ and other offensive weapons, have frequently entred  
 ‘ into several of his majesty’s forests and chaces, and  
 ‘ into the chaces of several of his majesty’s subjects, and  
 ‘ there unlawfully hunted, taken and killed great num-  
 ‘ bers of deer, and also many times violently assaulted,  
 ‘ beat, and wounded the keepers or officers of such fo-  
 ‘ rests, chaces, and also of parks, to the great damage  
 ‘ and terror of many of his majesty’s peaceable subjects :  
 9 Geo. 1. c. 22. ‘ and whereas the said act of the ninth year of his said  
 Virtually re- ‘ late majesty hereby intended to be continued, inti-  
 pealed as to ‘ tuled, “ an act for the more effectual punishing  
 hunting, &c. ‘ wicked and evil-disposed persons going armed in dis-  
 red or fallow ‘ guise, and doing injuries and violences to the persons  
 deer, by 16 ‘ and properties of his majesty’s subjects, and for the  
 Geo. 3. c. 30. ‘ more speedy bringing the offenders to justice,” does  
 See 2 East’s ‘ not extend to the unlawful coursing, hunting, taking  
 Cr. L. 609. ‘ in toils, killing, wounding or taking away any red or  
 ‘ fallow deer, fed or kept in open forests or chaces where  
 ‘ deer are usually kept, but only to such as are inclosed  
 ‘ with pales, rails, or other fences ; and such offences  
 ‘ in uninclosed places are only punishable by the sta-  
 ‘ tute made in the third and fourth years of the reign of  
 ‘ their late majesties King William and Queen Mary,  
 ‘ intituled, “ an act for the more effectual discovery and  
 ‘ punishment of deer-stealers,” and which inflicts only  
 ‘ a pecuniary penalty for so doing, whereby such wicked  
 ‘ and disorderly persons are the more emboldened to  
 ‘ commit such offences therein, and it is become neces-  
 ‘ sary to make some further provision for the preven-  
 ‘ tion thereof ;’ be it therefore enacted by the authority  
 aforesaid, That if any person or persons who shall here-  
 after be convicted of unlawfully coursing, hunting,  
 taking in toils, killing, wounding, or taking away, any  
 red or fallow deer, in any open or uninclosed forest or  
 chace where deer are usually kept, shall, during the  
 continuance of the said act of the ninth year of his late  
 Majesty, be transported.

majesty, be guilty of a second offence of the like nature, A. D. 1737. and shall be thereof lawfully convicted upon indictment or information, such person or persons shall by judgment of the court wherein he or they shall be so convicted, be transported to one of his majesty's plantations in America for the space of seven years, in like manner as other offenders may be transported by the laws now in force; and if such person or persons shall return into any part of Great Britain or Ireland within the said seven years, every such person or persons shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

VIII. And to the intent that such conviction may be with as little trouble and expence as possible, be it further enacted by the authority aforesaid, That such offender or offenders shall and may be tried for every such second offence as aforesaid, before the justices of assize, oyer and terminer, or gaol-delivery, of and for that county, city, or place where such second offence shall be so done and committed; and that the justice or justices of the peace before whom such offender or offenders was or were convicted of such first and former offence, shall certify a true copy of such conviction under his or their hands and seals to the quarter sessions of the county, wherein such offence was committed, to be held next after such conviction had, there to be kept amongst the records of such quarter-sessions; and the clerk of the peace of such county shall, at the request of the prosecutor or any other in his majesty's behalf, certify a transcript under his hand and seal, briefly and in few words, containing the effect and tenor, of the first and former conviction of such offender or offenders, which certificate being produced in court, shall be a sufficient proof that such offender or offenders hath or have been before convicted of and for such first and former offence.

Such offenders how to be tried.



- A. D. 1737. IX. And be it further enacted by the authority aforesaid, That if any person or persons, armed as aforesaid, shall, at any time after the twenty-fourth day of June, one thousand seven hundred and thirty-seven, and during the continuance of the said last-mentioned act of the ninth year of his late majesty, come into any forest, chace, or park, wherein deer are usually kept (be the same inclosed or not inclosed) with an intent to course; hunt, take in toils, kill, wound, or take away any red or fallow deer, and shall there unlawfully beat or wound any keeper or keepers, page or pages of any such forest, chace, or park, where deer are usually kept, their servants or assistants, in the execution of his or their office or offices, and be thereof lawfully convicted, every such person or persons shall be transported to one of his majesty's plantations in America for the space of seven years, in like manner as other offenders may be transported by the laws now in force; and if such person or persons shall return into any part of Great Britain or Ireland within the said seven years, every such person and persons shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.
- Made perpetual by 31 Geo. 2. c. 42. 9 Ann. c. 25. ' X. And whereas by an act of parliament passed in the ninth year of the reign of her late majesty Queen Anne, intituled " an act for making an act of the fifth year of her majesty's reign, for the better preservation of the game, perpetual, and for making the same more effectual," it is enacted, That if any person between the first day of July and first day of September in any year, shall by hays, tunnels or other nets, drive and take any wild-duck, teal, widgeon, or any other water-fowl, in any places of resort for wild-fowl, in the moulting season, the offender being convicted thereof before one justice of the peace where the offence shall be committed, and by the oath of one credible witness, shall forfeit five shillings for every such fowl so taken,

‘ one moiety to the informer, the other to the poor of A. D. 1737.  
 ‘ the parish where the offence was done, to be levied by  
 ‘ a warrant of the justice of peace before whom the of-  
 ‘ fender was convicted, by distress and sale of his goods,  
 ‘ and for want of distress to be committed to the house  
 ‘ of correction for any time not exceeding one month  
 ‘ nor less than fourteen days, there to be whipt and kept  
 ‘ to hard labour; and the justice of the peace shall  
 ‘ cause such hays and nets to be seized and immediately  
 ‘ destroyed in his presence: and whereas the said act  
 ‘ hath been found by experience to be ineffectual, by  
 ‘ reason that the wild-fowl begin to moult before the  
 ‘ first of July, and have not done moulting by the first  
 ‘ of September, so that great numbers of wild-fowl are  
 ‘ yearly destroyed, contrary to the true intent and mean-  
 ‘ ing of the said act;’ therefore for remedy thereof, be  
 it enacted by the authority aforesaid, That if any per- Penalty on  
 son shall, in any year between the first day of June and taking wild-  
 the first day of October, by hays, tunnels, or other nets, fowl in nets,  
 drive and take any wild duck, teal, widgeon, or any in the moul-  
 other water-fowl, in any marshes, fens, or other places ing season.  
 of resort for wild-fowl, and shall be thereof convicted in  
 such manner as in the said act of the ninth year of her  
 late majesty Queen Anne is prescribed, he shall be  
 liable to the same penalties, to be levied in like manner,  
 as by virtue of the said act he would be liable to, if  
 such offence was committed between the first day of  
 July and the first day of September, and for want of  
 distress be committed to the house of correction, and  
 there punished as by the said act is directed.

A. D. 1740.

22 GEO. 2. C. 49. A. D. 1749.

AN ACT FOR MAKING A FREE MARKET FOR THE SALE OF FISH IN THE CITY OF WESTMINSTER; AND FOR PREVENTING THE FORESTALLING AND MONOPOLIZING OF FISH; AND FOR ALLOWING THE SALE OF FISH, UNDER THE DIMENSIONS MENTIONED IN A CLAUSE CONTAINED IN AN ACT OF THE FIRST YEAR OF HIS LATE MAJESTY'S REIGN, IN CASE THE SAME ARE TAKEN WITH A HOOK.

This act is explained and amended by 29 Geo. 2. c. 39. which is in part repealed by 33 Geo. 2. c. 27.

‘Whereas a free and open market for fish in the city of Westminster would greatly tend to increase the number of fishermen, and improve and encourage the fishery of this kingdom;’ may it therefore please your most excellent majesty, that it may be enacted, and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June, one thousand seven hundred and forty-nine, there shall be a free and open market held in the city of Westminster for all sorts of fish whatsoever; and that it shall and may be lawful for any person or persons to buy or sell any sort of fish in the said market, without any disturbance or molestation whatsoever; nevertheless yielding and paying such sums as are herein-after mentioned.

Trustees  
of the  
market.

II. And, to the end the said intended market may be erected, established and maintained, under such rules and regulations as are by this act herein-after directed and prescribed, be it further enacted by the authority aforesaid, That Lieutenant-general James Oglethorpe, the right honourable Granville Leveson Gower esquire, commonly called Lord Viscount Trentham, the right honourable George Doddington esquire, Sir Peter

Warren knight of the bath, Sir Bouchier Wray baro- A. D. 1749.  
 net, Sir Robert Grosvenor baronet, Sir John Crosse baronet, Sir Richard Lloyd knight, John Laroche esquire, George Harrison esquire. Thomas Fonnereau esquire, reverend doctor Scawen Kenrick, William Lowndes esquire, Captain Philip Durell, Thomas Wyndham, esquire, Thomas Smith esquire, Harman Verelst esquire, George Payne esquire, Henry Cheere esquire, Daniel Gell esquire, Francis Hutchinson esquire, William Pearce esquire, the reverend Wilson, D. D.

one of the prebendaries of the collegiate church of Saint Peter Westminster, Richard Combes esquire, Francis Gwyn esquire, Edward Vernon esquire, shall, from and immediately after the passing of this act, be and are hereby appointed trustees for putting this act in execution; and they, or the survivors of them, or any five or more of them, are hereby invested with all and every the powers and authorities given and granted by this act.

‘ III. And whereas a sum of money will be necessary  
 ‘ for preparing a proper place for the said market, and  
 ‘ in maintaining and keeping the same in repair, and  
 ‘ other incidental charges attending the same;’ be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of June, one thousand seven hundred and forty-nine, there shall be paid to the said trustees, or such other person or persons as the said trustees, or any five or more of them, shall, from time to time, appoint to receive the same, the following sums by every fisherman or other person or persons, selling any sort of fish in the said market, for coming with his boat or vessel to, or landing, standing, being or selling in or at the said market; that is to say,

Duties to be  
 paid by fish-  
 ermen.

‘ For each vessel laden with salt-fish, for groundage  
 ‘ the sum of eight pence for each day, and twenty pence  
 ‘ for each voyage.

Duties.



A. D. 1719.

‘ For each lobster-boat, dogger-boat, smack, or other vessel, laden with fresh sea-fish, the sum of two-pence for each day for groundage, and thirteen pence each voyage.

‘ For every oister-vessel or cock two pence each day for groundage, one halfpenny for each bushel for metage, and thirteen pence each voyage.’

Duties vested  
in trustees ;

Which said several sums shall and they are hereby declared to be vested in the said trustees and their successors ; and the same, and every part thereof, shall be paid, applied and disposed of, and assigned to and for the several uses, intents and purposes, and in such manner as is herein-after mentioned and directed ; and it shall and may be lawful to and for the said trustees, or any five or more of them, or such person or persons as they, or any five or more of them, under their hands and seals, shall, at a general meeting, nominate and appoint, to demand and take the sums hereby granted and made payable, and to levy the same upon any person or persons who shall, after demand thereof made, neglect or refuse to pay such sums as aforesaid, by distress of any boat or boats, or the tackle or furniture thereto belonging, or there found, and belonging to the person or persons who by this act are made liable to the payment of the same ; and to detain and keep such goods and chattels so distrained, until such sums, with the reasonable charges of such distraining and keeping, shall be paid ; and such person and persons so distraining, after the space of three days after such distress made and taken, shall and may sell the goods so distrained, returning the overplus, if any be, upon demand, to the owner thereof, after such sums, and the reasonable charges for distraining and keeping the same, shall be deducted and paid.

may be levied by distress.

‘ IV. And whereas the money to be collected by vir-

‘tue of this act, will not immediately raise a sufficient A. D. 1749.  
 ‘stock for effecting the purposes thereof;’ be it there-  
 fore enacted by the authority aforesaid, That from and <sup>Trustees im-</sup>  
 after the passing this act, the trustees appointed or to be <sup>powered to</sup>  
 appointed to put the same in execution, or any five or <sup>borrow mo-</sup>  
 more of them, shall and may, from time to time, at a ge-  
 neral meeting held by them for that purpose, by any  
 writing under their hands and seals assign over the said  
 sums arising by virtue of this act, or any part thereof, as  
 a security for any sum or sums of money to be borrowed  
 by the said trustees for the purposes of this act, to such  
 person or persons, or their trustees, who shall advance  
 and lend the same, to secure the payment thereof, with  
 such interest as shall be agreed upon, not exceeding five  
 pounds per centum per annum.

V. And be it further enacted by the authority afore-<sup>Application</sup>  
 said, That out of the money arising by the said sums <sup>of monies.</sup>  
 granted by this act, or the money borrowed on the cre-  
 dit thereof, as aforesaid, the said trustees, or any five or  
 more of them, at a public meeting assembled, shall in  
 the first place pay and discharge all expences and  
 charges incurred in passing this act of parliament; and  
 in the next place shall pay and discharge the expences  
 of laying out, making and erecting a commodious place  
 for the said market, and in finishing and keeping the  
 same in repair, and all other necessary expences attend-  
 ing the execution of this act.

VI. And be it further enacted by the authority afore-<sup>Trustees to</sup>  
 said, That the said trustees, or any five or more of them, <sup>appoint offi-</sup>  
 shall and may, at the first or any succeeding general <sup>cers, &c.</sup>  
 meeting, by writing under their hands and seals chuse  
 and appoint one or more fit person or persons to be col-  
 lector or collectors of the sums aforesaid, and shall ap-  
 point one or more treasurer or treasurers, and all other  
 necessary officers, as to them shall appear proper for the  
 better execution of the powers contained in this act, al-

A. D. 1740. lowing to such person or persons, so by them appointed, such salaries or other rewards for their trouble as to the said trustees, or any five or more of them, shall appear just and reasonable ; and the said trustees, or any five or more of them, shall and they are hereby impowered to remove or displace such treasurer or treasurers, collector or collectors, or other person or persons whatsoever, so by them from time to time appointed, and to place others in their stead ; and the person or persons so appointed to collect and receive the said sum or sums, and also such treasurer or treasurers so appointed as aforesaid, shall, before the said trustees, or any five or more of them, upon the first Monday in every month, or oftener, if thereunto required by the said trustees as aforesaid, give in a true, exact and perfect account in writing, under their respective hands, of all the monies which he or they, and every or any of them, shall to such time have received, paid and disbursed by virtue of this act, by reason of their respective offices ; and produce vouchers for the same, and shall pay over such balance to such person or persons, as the said trustees, or any five or more them, shall at such meeting direct ; and in case such treasurer or treasurers, collector or collectors, shall refuse to give in such account as often as required by the said trustees, or any five or more of them, at a general meeting, such person or persons so refusing shall be committed to the common gaol of the said city and liberty, by warrant under the hand and seal of any one of his majesty's justices of the peace for the said city and liberty of Westminster, upon application made to him by two of the said trustees, there to remain without bail or mainprize, until he or they shall make or render in a true, exact, and perfect account of their receipts and disbursements by virtue of this act ; and shall have produced and delivered up all vouchers relating thereto ; and shall

Collector and treasurer to account upon oath,

and produce vouchers, and pay over balance,

and in default be committed,

have likewise paid over the money due on such account A. D. 1749.  
to such person or persons as the said trustees, or any five  
or more of them, shall direct and appoint to receive the  
same.

VII. And be it further enacted by the authority afore-  
said, That the said trustees, or any five or more of them,  
shall yearly, and every year, within six weeks next af-  
ter the twenty-fifth day of December, make up and de-  
liver in to the justices of the peace acting within the said  
city of Westminster, at any petty or special sessions as-  
sembled, a just, true, and perfect account in writing,  
fairly entered in a book or books to be kept for that  
purpose, and signed by the said trustees, or any five or  
more of them, of all and every sum and sums of money  
which they shall know to have been received or dis-  
bursed under the authority of this act, during the pre-  
ceding year, with the balance (if any) remaining in the  
hands of the said trustees; and such account shall be  
kept by the clerk of the said sessions among the records  
thereof, to be inspected by any person or persons de-  
siring the same, upon payment of one shilling to the  
said clerk; and if any surplus of the said sums shall re-  
main in the hands of the said trustees, the same is hereby  
appropriated to, and shall be applied yearly and every  
year by them, within twelve months next after the de-  
livering of such accounts to the said justices as afore-  
said, in the binding out boys apprentices to fishermen,  
masters of ships, or some other person or persons em-  
ployed in the sea-service; such boys to be chosen by a  
majority of the said trustees at a general meeting to be  
held for that purpose.

VIII. And be it further enacted by the authority  
aforesaid, That it shall and may be lawful to and for  
any fishmonger, or other person or persons whatsoever,  
who shall buy any fish in the said market, to sell the  
same again in any other place or places, within the said

Trustees to  
deliver year-  
ly to the jus-  
tices an ac-  
count,

to be kept  
among the  
records, &c.

Fish bought  
in the market  
may be sold  
in any other  
place.



A. D. 1749. city of Westminster, or elsewhere, being sound and wholesome fish, without any lett or disturbance from any person or persons whatsoever for so doing; any law or statute to the contrary thereof in any wise notwithstanding.

‘ IX. And whereas the laws now in being have proved  
 ‘ insufficient to prevent the monopolizing and forestalling  
 ‘ of fish;’ be it further enacted by the authority aforesaid, That from and after the twenty-ninth day of September, one thousand seven hundred and forty-nine, all and every contract or contracts, which shall, before that time, have been made, and which are to take effect after the said twenty-ninth day of September, one thousand seven hundred and forty-nine, between any fishermen and fishmongers, or between any other persons whatsoever, in regard to the sale of fish to be afterwards sold by retail, shall be and are hereby declared to be absolutely void; and all such contracts, which are or shall be made to take effect in part before the said twenty-ninth day of September, one thousand seven hundred and forty-nine, shall be and are hereby declared to be void, so far as they shall relate to or be intended to take effect at any time subsequent to the said twenty-ninth day of September, one thousand seven hundred and forty-nine; and if from and after the said twenty-ninth day of September, one thousand seven hundred and forty-nine, any fisherman, fishmonger, or any other person or persons whatsoever, shall enter into or make any contract or contracts for buying up fish to be sold again by retail, before such fish shall be brought to an open market, and there exposed to publick sale, such contract or contracts are hereby declared to be absolutely void; and each and every party so contracting, as well the buyer as the seller, shall forfeit and pay for every such offence, the sum of fifty pounds, to be recovered and levied in manner herein-after mentioned.

Penalty on  
 contracting  
 for fish to be  
 sold by re-  
 tail, before  
 the same

one moiety whereof shall be paid to the said trustees <sup>A. D. 1742.</sup> appointed by this act, or any five or more of them, or <sup>shall be brought to market.</sup> their order, to be placed to the general account, to be appropriated as aforesaid, and the other moiety to such person or persons as shall inform, sue for, and recover the same.

X. Provided always, 'That if either of the parties so contracting as aforesaid, shall, before any information made against him, inform against the other, such party so informing, so as such other party may be duly convicted of such offence, shall not only be acquitted from the said penalty, but shall also be intitled to sue for in his, her, or their own name, and recover the whole forfeiture incurred by the other; one moiety thereof to be paid to the said trustees, and appropriated as aforesaid; and the other moiety to such person or persons who shall sue for and recover the same.

XI. Provided always, 'That nothing in this act con- <sup>Contracts for fresh salmon, &c. to subsist.</sup> tained shall extend, or be construed to extend, to make void any contracts already made, or to prevent any contracts to be made, by any fishmonger or fishmongers, or any person or persons whatsoever, in regard to fresh salmon or soles brought by land carriage, or to oysters, or salt or dried fish.

' XII. And lest fishermen, and other persons employed in catching, importing, or vending of fish, should bring fish to Queenborough, Gravesend, or some other place or places in the river of Thames, and there keep it for a considerable time, and send only small quantities, from time to time, to market, with a view to keep up the price of the several species of fish, which such person or persons respectively import or trade in; which practice will not only tend to enhance the value of fish, but also to render it unwholesome food, to the great prejudice of the consumer, as well as the fishery in general;' to prevent

A. D. 1749. such practices, be it further enacted by the authority  
 Penalty on fishermen not selling their fish within eight days from their arrival on the coast between Yarmouth and Dover. aforesaid, That if any fisherman, or other person or persons whatsoever, natives or foreigners, shall keep any fish at Queenborough, Gravesend, or other place or places, in any well-boat, store-boat, or any other manner whatsoever, so as not to sell off their whole cargo of fish, within the space of eight days, from their arrival on the British coast, between North Yarmouth and Dover, after their first arrival at the respective place or places as aforesaid, every person or persons so offending, and being thereof lawfully convicted by the confession of the party, or the oath of one or more credible witness or witnesses, shall, for every such offence, forfeit the whole cargo of fish belonging to him, and also the vessel, with her tackle, apparel, and furniture, to be levied by distress and sale, by warrant under the hand and seal of any one or more of his majesty's justices of the peace for the respective county where the offence shall be committed; which warrant or warrants the said justice or justices is and are hereby impowered and required to make, upon the information on oath of one or more credible witness or witnesses (which oath the said justice or justices is and are hereby impowered and required to administer;) and the said produce thereof shall go and be applied, one moiety to the use and benefit of the informer or informers, and the other moiety to the poor of the parish where the offence shall be committed.

‘ XIII. And whereas the commissioners for building  
 ‘ a bridge cross the river Thames, from the New Palace  
 ‘ Yard in the city of Westminster, to the opposite shore  
 ‘ in the county of Surry, are possessed of a piece of  
 ‘ ground near Cannon-row in the said city of West-  
 ‘ minster, which is conveniently situate for holding the  
 ‘ said intended market;’ be it therefore enacted and declared by the authority aforesaid, That the said com-

missioners are hereby authorized and impowered to make A. D. 1749. a grant of the said piece of ground to the trustees appointed by this act, and their successors, to be made use of for holding the said intended market ; for the grant of which ground the said trustees shall pay the said commissioners the sum of five pounds, as the consideration or purchase-money for the same.

XIV. And be it further enacted by the authority Property of the market vested in the trustees. aforesaid, That the right and property of all the buildings, and the materials employed therein for making the said market commodious, shall be vested in the said trustees appointed, or to be appointed, to put this act in execution, and they, or any five or more of them, are hereby authorized and impowered to bring actions or prefer bills of indictment, against any person or persons who shall steal, take away, break down, or otherwise damage such building or materials employed therein.

XV. Provided always, and be it further enacted and No trustee to accept of any place of profit, declared, That no person or persons appointed, or to be appointed, by this act, a trustee or trustees for putting the same in execution, shall have or accept of any place of profit arising out of or by reason of any sums by this act laid or granted ; but such person or persons shall be incapable of acting as a trustee or trustees from the time of his accepting, and during the enjoyment of such place of profit as aforesaid.

XVI. And for continuing a sufficient number of (On death or removal of trustees, others to be chosen. trustees for putting this act in execution, be it further enacted by the authority aforesaid, That when and as often as any trustee or trustees shall die, or, by writing under his or their hand, refuse to act, it shall and may be lawful for such of the said trustees as shall then survive or remain, or any seven or more of them, at any general meeting, by any writing or writings under their hands and seals, to elect, nominate, and appoint one or



A. D. 1749. more fit person or persons in the room or place of such trustee or trustees so dying or refusing to act as aforesaid ; and such person or persons so elected, nominated, or appointed, shall be joined with such surviving or remaining trustees, in execution of all and every the powers in them reposed by virtue of this act.

First meeting  
of the trustees.

XVII. And be it further enacted by the authority aforesaid, That the first meeting of the said trustees shall be on the second Monday in July, at the house known by the name of the King's Arms in the New Palace Yard, in the city of Westminster ; and they shall have power to adjourn their succeeding meetings, from time to time, and to such places, as they shall think fit.

Bonds for  
not suing for  
a penalty,  
declared  
void

XVIII. And be it further enacted by the authority aforesaid, That all bonds or other securities whatsoever, to be entered into, or given, for not suing or recovering any penalty or forfeiture incurred, or to be incurred, by virtue of this act, shall be, and they are hereby declared to be absolutely null and void ; any law, statute, custom, or usage to the contrary notwithstanding.

Forfeitures  
how to be  
recovered  
and applied.

XIX. And be it further enacted by the authority aforesaid, That all penalties and forfeitures incurred or inflicted by virtue of this act, if not otherwise by this act directed to be recovered, shall and may be prosecuted and recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster ; wherein no essoin, protection, privilege, wager of law, or more than one imparlance shall be allowed ; and such forfeitures shall go and be applied (if not otherwise directed by this act) one moiety thereof to the person or persons who shall inform, sue for, or recover the same ; and the other moiety to the poor of the parish where the cause of action shall arise.

Limitation of  
actions.

XX. Provided always, and be it further enacted by the authority aforesaid, That if any action or suit shall

be commenced against any person or persons for any A. D. 1749. thing done in pursuance of this act, every such action or suit shall be brought within six months next after the fact committed, and not afterwards, and shall be laid or brought in the county or place where such offence shall be committed, and not elsewhere; and the defendant or defendants, in every such action or suit so to be brought, shall and may plead the general issue, not guilty, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have been done, or that such action or suit shall be brought after the time limited for bringing the same as aforesaid, that then the jury shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall become nonsuited, or discontinue his action, after the defendant or defendants shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have such remedy for the same, as any defendant or defendants hath or have in any case by law.

General  
issue.

Treble costs.

‘ XXI. And whereas by an act of the first year of <sup>1 Geo. 1. c. 18.</sup> the reign of his late majesty King George the First, <sup>See 29 Geo. 2. c. 39.</sup> intituled, “an act for the better preventing fresh fish taken by foreigners being imported into this kingdom; and for the preservation of the fry of fish; and for the giving leave to import lobsters and turbets in foreign bottoms; and for the better preservation of salmon within several rivers in that part of this kingdom called England;” it is enacted, that no brett, turbet, bril or pearl, codlin, whiting, mullet, bass, place, soles, or flounders, which shall not be of the several lengths or sizes therein described, shall be sold, offered or exposed to sale, or exchanged for

A. D. 1749. ‘ any other goods, in that part of Great Britain called  
 ‘ England: and whereas several of the said fish are  
 ‘ taken with a hook, and though thrown again into the  
 ‘ sea, cannot be preserved alive ;’ be it enacted by the  
 authority aforesaid, That fish, under such dimensions as  
 are prohibited by the said recited clause, may be ex-  
 posed to sale, or exchanged for any other goods, pro-  
 vided such fish are taken with a hook, and so not fit or  
 capable of being preserved alive ; any thing contained  
 in the said recited act to the contrary notwithstanding.

Fish under  
 size, if taken  
 with a hook,  
 may be sold.

A. D. 1750.

23 GEORGE 2. C. 26. A. D. 1750.

AN ACT ‘ TO AMEND SO MUCH OF AN ACT MADE IN  
 THE FIRST YEAR OF THE REIGN OF KING GEORGE  
 THE FIRST, AS RELATES TO THE BETTER PRESER-  
 VATION OF SALMON IN THE RIVER RIBBLE.’

1 Geo. 1. c. 18.  
 c. 11. ‘ VII. And whereas by an act of parliament made in  
 ‘ the first year of the reign of his late majesty King  
 ‘ George the First, intituled, “an act for the better pre-  
 ‘ venting fresh fish taken by foreigners being imported  
 ‘ into this kingdom ; and for the preservation of the fry  
 ‘ of fish ; and for the giving leave to import lobsters and  
 ‘ turbutts in foreign bottoms ; and for the better preser-  
 ‘ vation of salmon within several rivers, in that part of  
 ‘ this kingdom called England,” all persons what-  
 ‘ soever were restrained under the penalties, forfeitures,  
 ‘ and punishments therein mentioned, from taking, kill-  
 ‘ ing, destroying, or wilfully hurting salmon of any  
 ‘ kind or size whatsoever, in the river Ribble in the  
 ‘ county of Lancaster, and other rivers therein parti-  
 ‘ cularly named, between the last day of July and the  
 ‘ twelfth day of November for ever ; which restraint  
 ‘ hath been found inconvenient as to the said river Rib-

‘ ble, by reason that the time limited for the restraining A. D. 1750.  
 ‘ the taking fish therein is not properly suited or  
 ‘ adapted to the fishing seasons there, so as to answer  
 ‘ the intention of the said act, but it would be much  
 ‘ more advantageous to the salmon fisheries in that river,  
 ‘ if persons were restrained from taking, killing, de-  
 ‘ stroying, or wilfully hurting any salmon in the said  
 ‘ river Ribble, betwixt the fourteenth day of September  
 ‘ and the second day of January yearly, and were at  
 ‘ liberty to take and kill the same the remainder of the  
 ‘ year ;’ be it therefore enacted by the authority afore-  
 said, That it shall and may be lawful to and for the re- Liberty given  
 spectice owners and proprietors of the fisheries and fish- to take sal-  
 ings in the said river Ribble, and every other person or mon in the  
 persons intituled to fish therein, and their and every of river Ribble  
 their lessees, tenants, servants and agents, and every of between  
 them, at any time or times hereafter, betwixt the first 1 Jan. and 15  
 day of January and fifteenth day of September in any Sept.  
 year, to take and kill by any lawful ways or means  
 whatsoever, any salmon, salmon peal, or salmon kind,  
 in their respective fisheries and places within the said  
 river Ribble, and to sell any of the fish so taken be-  
 tween the times aforesaid ; any thing in the said recited  
 act, or any other act, to the contrary notwithstanding.

VIII. And be it further enacted by the authority afore- Penalty of  
 said, That if any person or persons whatsoever shall at taking sal-  
 any time hereafter, between the fourteenth day of Sep- mon out of  
 tember and second day of January for ever, by or with the time  
 any net, device, engine, ways or means whatsoever, limited.  
 take, kill, destroy or wilfully hurt any salmon, of any  
 kind or size whatsoever, in the said river Ribble, such  
 person or persons shall incur and be subject to such and  
 the same penalties, forfeitures and punishments as were  
 by the said recited act inflicted upon persons taking,  
 killing, destroying or wilfully hurting salmon in the said  
 river, betwixt the last day of July and twelfth day of



A. D. 1750. November, and shall be proceeded against and convicted thereof, in the same manner, as by such recited act is for that purpose directed.

The said act continued.

IX. Provided always, and it is hereby declared, That all and every the clauses, articles, matters and things contained in the said recited act (save the alteration hereby made in the times of taking and being restrained from taking salmon in the said river Ribble as aforesaid) shall be and remain in full force; any thing herein contained to the contrary notwithstanding.

A. D. 1751.

24 GEORGE 2. C. 34. A. D. 1751.

AN ACT FOR THE BETTER PRESERVATION OF THE GAME IN THAT PART OF GREAT BRITAIN CALLED SCOTLAND.

Moor-fowl,  
&c. not to  
be killed out  
of season.

‘Whereas it is necessary that the laws now in force in Scotland, for regulating the times for killing the game, and for preventing the abuses of carriers, poachers, and others carrying and selling the same, should be amended and made more effectual;’ be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That no person in Scotland shall, upon any pretence whatsoever, kill or destroy any moor-fowl, from the first day of January to the tenth day of July, or any partridge or heath-fowl, from the first day of February to the twentieth day of August in any year. (Repealed by 1 Geo. 3. c. 21.)

Penalty on  
having in  
custody.

II. And be it further enacted by the authority aforesaid, That no person whatsoever, not qualified to kill game in Scotland, shall have in his or her custody or carry at any time of the year, upon any pretence what-

soever, any hares, partridges, pheasants, muir-fowl, A. D. 1751.  
 heath-fowl, snipes, or quails, without the leave or orders  
 of a qualified person first obtained, for carrying such  
 hares or other game, or for having the same in his  
 or her custody.

III. And be it further enacted by the authority afore-<sup>Penalty of</sup>  
 said, That every person transgressing this act, shall for <sup>transgres-</sup>  
 the first offence forfeit and pay the sum of twenty shil-<sup>sing this act,</sup>  
 lings sterling ; and for the second and every other sub-  
 sequent offence the sum of forty shillings sterling ;  
 which respective fines shall and may be levied by dis-  
 tress and sale of the goods of the offender ; and in case  
 of insolvency, the party offending shall suffer imprison-  
 ment for the space of six weeks for the first offence, and  
 for the space of three months for the second and every  
 other subsequent offence.

IV. And be it further enacted by the authority afore-<sup>Offences how</sup>  
 said, That all offences against this act shall and may be <sup>to be tried.</sup>  
 enquired into and determined, either by the oath or  
 oaths of one or more credible witness or witnesses, or by  
 the confession or oaths of the parties accused, before any  
 two or more of his majesty's justices of the peace, or be-  
 fore the sheriff of the county where the offence shall be  
 committed, or where the offender shall be found ; and  
 that all prosecutions for offences against this act shall  
 be carried on either at the instance of the fischal of  
 court, or of any other person who will inform or com-  
 plain.

V. And be it further enacted by the authority afore-<sup>Application</sup>  
 said, That one moiety of the forfeitures to be incurred <sup>of the for-</sup>  
 for any offence against this act shall, when recovered, <sup>feitures.</sup>  
 be paid to the informer or prosecutor, and the other  
 moiety shall be applied for such publick services within  
 the county where the offence shall be committed, as the  
 justices of the peace or the sheriff respectively shall  
 direct, before whom the offender shall be convicted.

A. D. 1751.

Persons aggrieved may appeal.

VI. Provided always, That any persons aggrieved by the judgment of the said justices or sheriff respectively, shall have liberty to appeal to the next general or quarter-session, in case such judgment was given by any justices of the peace as aforesaid, or to the lords of justiciary in their next circuit court, or (where there are no circuit courts) to the court of justiciary at Edinburgh, in case the judgment complained of was given by the sheriff of any county; and that the determination of the said general or quarter-sessions, or of the said circuit court, shall be final and conclusive to all parties.

A. D. 1753.

26 GEORGE 2. C. 2. A. D. 1753. *Rep*

AN ACT, TO AMEND AN ACT MADE IN THE EIGHTH YEAR OF THE REIGN OF HIS LATE MAJESTY KING GEORGE THE FIRST, INTITULED, 'AN ACT FOR THE BETTER RECOVERY OF THE PENALTIES INFLICTED UPON PERSONS WHO DESTROY THE GAME,' BY ENLARGING THE TIME WITHIN WHICH SUITS AND ACTIONS ARE TO BE BROUGHT BY FORCE OF THE SAID ACT.

8 Geo. 1.  
c. 19. § 2.

' Whereas by an act of parliament made in the eighth year of the reign of his late majesty King George, intituled, "an act for the better recovery of the penalties inflicted upon persons who destroy the game," it is provided, that all suits and actions to be brought by force of the said act, shall be brought before the end of the next term after the offence committed: and whereas the time allowed by the said act for the bringing of such suits and actions has been found very inconvenient, and in many cases is not sufficient for the commencing of prosecutions against offenders, whereby the intent of the said act hath been

‘ in some degree defeated ;’ be it therefore enacted by A. D. 1753.  
the king’s most excellent majesty, by and with the ad-  
vice and consent of the lords spiritual and temporal, and  
commons, in this present parliament assembled, and by  
the authority of the same, That all suits and actions to  
be brought by virtue of the said act, for the recovery of  
any pecuniary penalty or sum of money for offences,  
which after the twenty-fifth day of March, one thousand  
seven hundred and fifty-three, shall be committed against  
any law now in being for the better preservation of the  
game, shall and may be brought before the end of  
the second term after the offence committed ; any thing  
in the said act contained to the contrary notwith-  
standing.

Suits for  
penalties  
may be  
brought be-  
fore the end  
of the second  
term.

Altered by  
2 Geo. 3.  
c. 19. which  
allows six  
months. See  
2 East’s Re-  
ports, 333.

28 GEORGE 2. C. 12. A. D. 1755. *Rep*

A. D. 1755.

AN ACT TO EXPLAIN AND AMEND A CLAUSE IN AN  
ACT MADE IN THE FIFTH YEAR OF THE REIGN OF  
QUEEN ANNE, INTITULED, ‘ AN ACT FOR THE  
BETTER PRESERVATION OF THE GAME,’ IN RELA-  
TION TO THE SELLING OR OFFERING TO SALE  
ANY GAME.

‘ Whereas by an act of parliament made in the fifth <sup>5 Ann. c. 14.</sup>  
‘ year of her late majesty Queen Anne, intituled, “ an  
‘ act for the better preservation of the game ;” it was  
‘ enacted, That if any higlar, chapman, carrier, inn-  
‘ keeper, victualler or alehouse-keeper, should have in  
‘ his custody or possession, or should buy, sell or offer  
‘ to sell any hare, pheasant, partridge, moor, heath-  
‘ game or grouse, every such higlar, chapman, inn-  
‘ keeper, victualler, alehouse-keeper or carrier, (unless  
‘ such game in the hands of such carrier be sent by any  
‘ person or persons qualified to kill the game,) shall, upon  
‘ conviction of such offence, forfeit for every hare, pheas-



A. D. 1755. ‘ sant, partridge, moor, heath-game or grouse, the sum  
 ‘ of five pounds, one half to be paid to the informer, and  
 ‘ the other to the poor of the parish where the offence  
 ‘ was committed : and whereas doubts have arisen with  
 ‘ respect to the meaning of the word chapman, whereby  
 ‘ the intent of the said act hath been in some degree de-  
 ‘ feated ;’ be it therefore enacted by the king’s most ex-  
 cellent majesty, by and with the advice and consent of  
 the lords spiritual and temporal, and commons, in this  
 present parliament assembled, and by the authority of  
 the same, That if any person or persons whatsoever,  
 whether qualified or not qualified to kill game, shall sell,  
 expose, or offer to sale any hare, pheasant, partridge,  
 moor, heath-game, or grouse, every such person or per-  
 sons shall, for every such offence, be subject and liable  
 to the same forfeitures, pains and penalties, as are in-  
 flicted by the said recited act upon higlars, chapmen,  
 carriers, inn-keepers, victuallers or alehouse-keepers, for  
 buying, selling or offering of game to sale.

Persons  
 selling or ex-  
 posing to  
 sale, any  
 game, liable,  
 &c.

Game found  
 in the house  
 or possession  
 of a poulterer,  
 &c. deemed  
 exposing  
 thereof to  
 sale.

II. And be it further enacted by the authority afore-  
 said, That if any hare, pheasant, partridge, moor,  
 heath-game or grouse, shall be found in the shop, house  
 or possession of any poulterer, salesman, fish-monger,  
 cook or pastry-cook, the same shall be adjudged,  
 deemed and taken to be an exposing thereof to sale  
 within the true intent and meaning of this act and the  
 said recited act, or any other act ; which said forfei-  
 tures shall be recovered, and such penalties inflicted, by  
 such means, and in such manner, and from and within  
 such time, and shall be applied to such uses, as are pre-  
 scribed by the said recited act, or by any other act or  
 acts since made for the preservation of the game ; any  
 thing in the said recited act, or any other law or statute  
 to the contrary thereof in any wise notwithstanding.

A. D. 1755.

## c. 19.

AN ACT 'FOR THE PREVENTING THE BURNING OR  
DESTROYING OF GOSS, FURZE OR FERNE, IN  
FORESTS OR CHACES.'

' III. Whereas the burning and destroying of goss,  
' furze and fern, in and upon forests and chaces, as it  
' is frequently done by divers disorderly and dissolute  
' persons, doth not only destroy the cover necessary for  
' the preservation of the deer and game there, but hath  
' also been the occasion of burning, damaging and de-  
' stroying of great quantities of timber, young springs of  
' wood and underwood and fences, within the said forests  
' and chaces, and places thereunto adjacent, to the great  
' damage and prejudice of the owners and proprietors  
' thereof; and the laws now in being are not sufficient to  
' prevent the same;' be it therefore enacted by the au-  
thority aforesaid, That if any person or persons not  
having a right or legal licence to do the same, shall at  
any time after the first day of August, one thousand seven  
hundred and fifty-five, set fire to, burn or destroy, or  
shall abet, aid or assist in or at the burning or destroy-  
ing of any goss, furze or fern, growing or being in or  
upon any forest or chace, within that part of Great  
Britain called England, without the licence or consent  
of the owner or proprietor, or the person chiefly in-  
trusted with the care, oversight and custody of such  
forest or chace, or some part thereof, and being brought  
before one or more justice or justices of the peace for the  
county, riding, division or place, where such forest or  
chace shall lie, and shall be thereof convicted by con-  
fession, or upon the oath of one or more credible witness

Persons con-  
victed of  
setting fire to  
goss, furze,  
heath or  
fern, in  
chaces or  
forests,

A. D. 1755. or witnesses, (which oath such justice or justices is and are hereby impowered to administer,) or upon the view of such justice or justices, every such person or persons, being so convicted, shall for every such offence forfeit and pay any sum not exceeding five pounds nor less than forty shillings, one moiety thereof to the informer, and the other moiety to the use of the poor of the parish where the offence shall be committed; which penalty, in case the same be not forthwith paid, shall and may be levied by distress and sale of the offender's goods and chattels, by warrant or warrants under the hand and seal or hands and seals of such justice or justices; and in case no sufficient distress can be found, then it shall and may be lawful for such justice or justices to commit such offender or offenders to the common gaol of the county or place where such offence shall be committed, for any time not exceeding three months nor less than one month.

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A. D. 1756.

29 GEORGE 2. C. 39. A. D. 1756.

AN ACT FOR EXPLAINING, AMENDING, AND RENDERING MORE EFFECTUAL AN ACT MADE IN THE TWENTY-SECOND YEAR OF HIS PRESENT MAJESTY'S REIGN, INTITULED, 'AN ACT FOR MAKING A FREE-MARKET FOR THE SALE OF FISH IN THE CITY OF WESTMINSTER; AND FOR PREVENTING THE FORESTALLING AND MONOPOLIZING OF FISH; AND FOR ALLOWING THE SALE OF FISH UNDER THE DIMENSIONS MENTIONED IN A CLAUSE CONTAINED IN AN ACT OF THE FIRST YEAR OF HIS

LATE MAJESTY'S REIGN, IN CASE THE SAME ARE A. D. 1756.  
TAKEN WITH A HOOK.'

This act is in part repealed by 33 *Geo. 2. c. 27.* <sup>22 *Geo. 2*</sup>  
The provisions being of a local nature, and very volu-<sup>c. 49.</sup>  
minous, the reader is referred to "The Statutes at  
Large."

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30 GEO. 2. c. 21. A. D. 1757.

A. D. 1757.

AN ACT FOR THE MORE EFFECTUAL PRESERVATION  
AND IMPROVEMENT OF THE SPAWN AND FRY OF  
FISH IN THE RIVER OF THAMES, AND WATERS OF  
MEDWAY; AND FOR THE BETTER REGULATING THE  
FISHERY THEREOF.

‘ Whereas by an act of parliament made and passed in 9 *Ann. c. 26.*  
‘ the ninth year of the reign of her late majesty Queen  
‘ Anne, intituled, “ an act for the better preservation  
‘ and improvement of the fishery within the river of  
‘ Thames; and for regulating and governing the com-  
‘ pany of fishermen of the said river,” it was enacted,  
‘ that from and after the tenth day of June, one thou-  
‘ sand seven hundred and eleven, it should and might  
‘ be lawful to and for the court of assistants of the said  
‘ company for the time being, or the major part of them  
‘ present, to make such bye-laws and ordinances for the  
‘ good rule and government of the said company as  
‘ they should think fit, so as the same should be always  
‘ first approved of, or from time to time altered and  
‘ amended by the court of the mayor and aldermen of  
‘ the city of London, and likewise allowed and con-  
‘ firmed according to the form of the statute in that be-



A. D. 1757. ‘ half made and provided ; and that from and after the  
‘ said tenth day of June there should be yearly elected  
‘ and chosen by the next court of mayor and aldermen  
‘ to be held after the tenth day of June, out of the six  
‘ wardens of the said company for the time being, to be  
‘ nominated by the said court of assistants, one fit per-  
‘ son to be a master of the art or mystery of fishermen ;  
‘ and also out of twelve assistants to be nominated as  
‘ aforesaid, six fit persons to be wardens of the said art  
‘ or mystery (whereof the water-bailiff of the city of  
‘ London for the time being to be one) ; and in like man-  
‘ ner, out of sixty of the commonalty, to be nominated  
‘ as aforesaid, thirty fit persons to be assistants of the  
‘ said company ; which said master, wardens and as-  
‘ sistants, or any sixteen of them, together with three of  
‘ the said wardens, should be and were thereby con-  
‘ stituted the court of assistants of the said company  
‘ for the time being, and were required to meet and as-  
‘ semble together, from time to time, on the first Tues-  
‘ day in every calendar month in the year, in the hall of  
‘ the said company, in order to form the said court of  
‘ assistants, and keep the same for regulating and re-  
‘ forming abuses committed in the said fishery, and for  
‘ the due ordering and governance of the said com-  
‘ pany : and whereas in pursuance of the said act of  
‘ parliament, certain bye-laws and ordinances were  
‘ made for regulating the said fishery, and reforming  
‘ abuses committed therein, but the said company hav-  
‘ ing ceased to act from about the year one thousand  
‘ seven hundred and twenty-seven, and most of the  
‘ members thereof being dead, the regulations in the  
‘ said fishery intended by the said act have not taken  
‘ place, and the several laws now in force for the pre-  
‘ servation of the said fishery have hitherto proved inef-  
‘ fectual, and by the unwarrantable practices used by  
‘ fishermen and others, the brood and fry of fish in the

said river and waters of Medway have been greatly A.D. 1757.  
 hurt and destroyed ; for remedy whereof, and for the  
 better preserving the spawn, fry and young brood of  
 fish in the said river of Thames, and also in the waters  
 of Medway, so far as the same are within the jurisdic-  
 tion of the mayor of the city of London, as conserva-  
 tor of the river of Thames, and waters of Medway,  
 and for preventing the fishing therein with unlawful  
 and unsizeable nets, engines or other devices ; and for  
 the ascertaining the times, seasons, and manner of  
 fishing in the said river and waters, and the size and  
 kind of nets and engines to be used in fishing in the  
 said river and waters ; and for regulating the said  
 fishery, and reforming abuses therein ; and for the  
 more speedy and effectual apprehending and punish-  
 ing the offenders ;' be it enacted by the king's most  
 excellent majesty, by and with the advice and consent  
 of the lords spiritual and temporal, and commons, in  
 this present parliament assembled, and by the authority  
 of the same, That the court of mayor and aldermen of  
 the said city of London for the time being shall have  
 full power and authority, and they are hereby required,  
 on or before the twenty-ninth day of September, in the  
 year of our Lord one thousand seven hundred and fifty-  
 seven, to make, frame and set down in writing such rea-  
 sonable rules, orders or ordinances, for the governing and  
 regulating all persons who shall fish or drudge in the  
 said river of Thames, and also in the said waters of Med-  
 way, (within the said jurisdiction of the said mayor, as  
 conservator as aforesaid,) as common fishermen or drud-  
 germen, or otherwise ; and for declaration in what man-  
 ner they shall demean themselves in fishing, and with  
 what manner of nets and engines, and at what times and  
 seasons they shall use fishing in the said river and waters of  
 Medway, within the jurisdiction aforesaid, and for as-  
 certaining the assize of the several fish to be there taken ;

Court of  
 mayor and  
 aldermen of  
 London im-  
 powered to  
 make rules,  
 &c.

A. D. 1757. and for the preservation from time to time of the spawn and fry of fish in the said river and waters within the jurisdiction aforesaid ; and for obliging every common fisherman and drudgerman, or other such person who shall fish with a boat, vessel or craft, from and after the said twenty-ninth day of September, one thousand seven hundred and fifty-seven, in the said river of Thames, and in the said waters of Medway, within the jurisdiction aforesaid, to have in his boat, vessel or craft, both his christian and surname, and also the name of the parish or place in which he dwelleth, painted in legible and large characters, in some convenient place where any one may see and read the same ; and for preventing such name or mark of distinction from being changed, altered or defaced ; and to annex reasonable penalties and forfeitures for the breach of such rules, orders and ordinances, not exceeding the sum of five pounds for any one offence ; and such rules, orders and ordinances, or any of them, from time to time to alter and amend, and such new and other rules, orders and ordinances, touching the matters aforesaid, with such reasonable penalties and forfeitures (not exceeding five pounds for any one offence) from time to time to make, as to the said court in their discretion shall seem meet for the better putting this act in execution ; so as after the making thereof the same be allowed and approved of, from time to time, by the lord chancellor of Great Britain, the lord keeper or lords commissioners of the great seal for the time being, the lord chief justice of the court of king's-bench, the lord chief justice of the court of common-pleas, the lord chief baron of the court of exchequer, or any two of them, who are hereby required, on request from time to time to them, or any two or more of them, made by or on the behalf of the said court of mayor and aldermen, to peruse and examine all such rules, orders or ordinances,

as shall from time to time be made by the said court of A. D. 1757.  
 mayor and aldermen, in pursuance of this act, and laid  
 before the said lord high chancellor, lord keeper, or lords  
 commissioners of the great seal for the time being, the  
 said lord chief justice of the court of king's-bench, the  
 said lord chief justice of the court of common-pleas, the  
 said lord chief baron, or any two of them, for their al-  
 lowance and approbation ; and they, or any two of them,  
 are to allow thereof, or alter the same before they allow  
 thereof, as they, or any two of them, shall from time to  
 time think fit ; and for the doing thereof no fee or reward  
 shall be paid or taken.

II. And be it further enacted by the authority afore-  
 said, That no person or persons whatsoever shall, with-  
 in the said jurisdiction of the said mayor, from and after  
 the first day of November, one thousand seven hundred  
 and fifty-seven, wilfully take, destroy, spoil, kill, or ex-  
 pose to sale, or exchange for any goods, matter or thing  
 whatsoever, any spawn, fry or brood of fish, or spatt of  
 oysters, or any unsizeable or unwholesome fish, or fish  
 out of season, or bring such fish on shore for sale, or use  
 or keep any net, engine, or other device whatsoever,  
 which shall be prohibited or declared unlawful in and  
 by such rules, orders and ordinances of the said court of  
 mayor and aldermen of the said city, allowed and ap-  
 proved of as aforesaid, upon pain of forfeiting and pay-  
 ing, for every offence, such sum and sums of money as  
 in and by such rules, orders or ordinances shall be re-  
 spectively appointed, and to be recovered in such man-  
 ner as is herein-after mentioned.

III. Provided nevertheless, and be it enacted by the  
 authority aforesaid, That such rules, orders and ordi-  
 nances, so to be from time to time made by the said  
 court of the mayor and aldermen, shall, within thirty  
 days after the same shall be allowed and approved of as

Penalties an-  
 nexed to the  
 said rules  
 confirmed.

Rules to be  
 published.



A. D. 1757. aforesaid, be printed and made public in such manner as the said court shall think proper, and from time to time order.

‘ IV. And, to the intent the said court of the mayor and aldermen of the said city may be the better informed what rules, orders and ordinances may be proper to be made from time to time for the better regulation and preservation of the said fishery;’ be it further enacted by the authority aforesaid, That the said court shall, at some time or times between the twenty-fifth day of June and twenty-ninth day of September next, and so yearly for ever thereafter, (if occasion shall so require,) between the twenty-fifth day of June and twenty-ninth day of September in every year, order to be summoned before them such and so many persons who shall fish in the said river of Thames, or waters of Medway, within the jurisdiction aforesaid, as common fishermen or drudgermen (not exceeding twelve in number) as to the said court shall seem meet, to be examined upon oath (if the said court shall so think fit) touching the fish and fishery of the said river and waters; and if any such common fisherman or drudgerman being personally summoned by writing to attend the said court of mayor and aldermen for the purposes aforesaid, by the space of fourteen days at the least, shall neglect or refuse so to do, or in case of attendance shall refuse to be examined upon oath as aforesaid, not having or making appear before the said court some just or lawful excuse for such neglect or refusal, then and in every such case he or they so offending shall, on due proof made by oath in such court of the due service of the summons in manner aforesaid, forfeit and lose the sum of forty shillings, to be levied by distress and sale of his or their goods and chattels, by warrant under the hand and seal of the said mayor, or the recorder of the said city, or any one alderman of the said city, directed to any assistant

Court to summon, occasionally, twelve of the fishermen, &c.

Fishermen refusing to attend or to be examined forfeit 40s.

of the said water-bailiff, or any constable, headborough A. D. 1757.  
 or peace-officer, empowering him, them or any of them  
 to make the said distress for the said forty shillings, and  
 cause the same to be appraised and sold after the expira-  
 tion of five days from the making such distress, render-  
 ing the overplus, if any, to the said offender; which  
 said penal sum shall, as soon as received, be paid to the  
 treasurer of Greenwich hospital for the benefit of the  
 same hospital.

V. And be it further enacted by the authority afore-  
 said, That for the better preservation of the said fishery <sup>Water-bailiff,</sup>  
 of the said river of Thames, and waters of Medway, <sup>his assistants</sup>  
 within the jurisdiction aforesaid, and for preventing, <sup>and others</sup>  
 as much as may be, any abuses from being committed <sup>authorized,</sup>  
 therein, it shall and may be lawful to and for the deputy  
 of the said mayor for the time being, as conservator as  
 aforesaid, commonly called the water-bailiff, and his as-  
 sistant and assistants, such assistant and assistants hav-  
 ing been named and appointed to be his assistant and  
 assistants, by warrant under the hand and seal of the  
 mayor of the said city for the time being, and likewise for  
 all and every other person or persons who shall for that  
 purpose be specially authorized by any warrant or war-  
 rants under the hand and seal of the said mayor, from  
 time to time, and at all times, to enter into any boat, <sup>may enter</sup>  
 vessel or craft, of any fisherman or drudgerman, or other <sup>into fisher-</sup>  
 person or persons fishing or taking fish, or endeavouring <sup>men's boats,</sup>  
 to take fish, upon the said river of Thames, or upon the  
 said waters of Medway, within the jurisdiction aforesaid,  
 and there search for, take and seize all spawn, fry, brood  
 of fish, spatt of oysters, and unsizeable, unwholesome, or  
 unseasonable fish, and also all unlawful nets, engines and  
 nstruments for taking or destroying fish, as shall then  
 be in any such boat or boats, vessel or craft, in or upon  
 the said river or waters; and to take and seize on the  
 shore or shores adjoining to the said river, or waters of

A.D. 1757. Medway, within the jurisdiction aforesaid, all such spawn, fry, brood of fish, spatt of oysters, unsizeable, unwholesome, or unseasonable fish, as shall be there found; and such deputy and assistants, or other persons who shall be so authorized as aforesaid, shall from time to time with all convenient speed, after the seizing or taking of any such unlawful nets, engines or instruments, or any spawn, fry, brood of fish or spatt of oysters, or unsizeable, unwholesome or unseasonable fish, bring or cause the same to be brought before the mayor of the said city for the time being, or the recorder of the said city, or one of the aldermen of the said city, if seized within the limits of the said city of London and liberties thereof, either upon the said river or on shore, or before the mayor of the said city for the time being, or the recorder of the said city, or one of the aldermen of the said city, or one of his majesty's justices of the peace of the county in which such seizure shall be made, if made upon the said river or waters, out of the limits of the said city, or the liberties thereof, but within the jurisdiction of the said mayor as conservator as aforesaid, or before one of his majesty's justices of the peace of the county in which the same shall be seized on shore, who shall respectively cause such nets, engine or instruments, or spawn, fry, brood of fish, spatt of oysters, unsizeable, unwholesome or unseasonable fish, so seized, to be examined; and if the same shall, upon view and examination thereof, or on proof on oath before him or them made (which oath he and they is and are hereby impowered to administer) appear to be unsizeable, unwholesome or unseasonable fish, or unlawful nets, engines or instruments for taking unsizeable fish, or destroying of fish or spawn of fish, contrary to such rules, orders or ordinances as shall be made by the said court of the said mayor and aldermen, and allowed and approved of as aforesaid, and the intent and meaning of this act, and that the same were so seized

as aforesaid, the said mayor, recorder, or any alderman A. D. 1757. of the said city, or justice respectively, within their respective jurisdictions, shall cause to be forthwith burnt or destroyed, as well all such unlawful nets, engines or instruments, as also all such spawn, fry, or unsizeable, unwholesome or unseasonable fish, as shall be seized as aforesaid.

VI. And be it further enacted by the authority aforesaid, That if any person or persons shall obstruct or penalty of 10l. for obstructing, hinder the said water-bailiff, his assistants, or any of the &c. said officers, or any constable, headborough or other peace-officer, in the execution of any of the powers vested in them by this act, or of any warrant or warrants to be issued by the said mayor, recorder or any alderman of the said city, or justice respectively, in pursuance of this act; or if any person or persons whatsoever shall rescue any person or persons who shall be apprehended or taken by virtue or in pursuance of any of the powers given by this act, the person or persons so offending therein shall, for every such offence, forfeit the sum of ten pounds, on conviction thereof, by the oath of one or more credible witness or witnesses, before the said mayor, recorder, or one of the aldermen of the said city, within the said city and liberties, or the jurisdiction aforesaid, or before a justice of the county where the said offence shall be committed, or where the offender shall be apprehended.

VII. And be it further enacted by the authority aforesaid, That the mayor, recorder or any one alder- Magistrates to determine complaints in a summary way. man of the said city, within the said city and jurisdiction aforesaid, and his majesty's justices of the peace of the respective counties within the jurisdiction aforesaid, or any one of them, shall have full power to hear and determine, in a summary way, complaints touching any unlawful or undue fishing, or taking or destroying fish,



A. D. 1757. or any other offences to be committed contrary to any of the rules, orders or ordinances, at any time hereafter to be made by the said court of the mayor and aldermen in pursuance of this act, and which shall be allowed and approved of as aforesaid; and the said mayor, recorder, aldermen and justices, and each of them respectively, within their respective jurisdictions, are and is hereby authorized and required upon view, or upon complaint made on oath to them respectively, of any such offence committed within their respective jurisdictions, contrary to such rules, orders or ordinances, within ten days after the commission of any such offence, to issue his or their warrant or warrants under his hand and seal, or their hands and seals, directed to the water-bailiff of the said city, or such his assistant or assistants as aforesaid, or to such constables, headboroughs or other peace-officers, as the said mayor, recorder, aldermen or justices, or any one of them, shall from time to time think fit, thereby requiring him or them to apprehend such offender or offenders, and to bring him, her or them before the said mayor, recorder, aldermen or justices, or any one of them, within their respective jurisdictions, to answer the matters of complaint to be contained in such warrant or warrants; and which warrant or warrants the person and persons to whom the same shall be directed, and their assistants, are hereby authorized, empowered and required to execute on the said river Thames, or on the waters of Medway, or on any part thereof, within the jurisdiction aforesaid, or on any shore adjoining to the said river or waters of Medway; and for that purpose they and every of them are hereby authorized, empowered and required, at all times, to go on board any boat, vessel or craft, in the said river or waters, or in the day-time, with a peace-officer, to enter any house wherein any such offender or offenders shall be, for the apprehending him,

her or them, and when apprehended, to carry him, her A. D. 1757.  
or them, as soon as conveniently may be, before the said  
mayor, recorder, or one of the aldermen of the said city,  
if apprehended in the said city of London, or the liber-  
ties thereof, and if apprehended out of the said city of  
London, or the liberties thereof, then before one of the  
justices of the county where the said offender or of-  
fenders shall be taken ; and the said mayor, recorder,  
aldermen and justices, within their respective jurisdic-  
tions, or any one of them, are and is hereby authorized  
and required to summon witnesses on either side before  
them, and to examine them on oath (which oath the said  
mayor, recorder, aldermen and justices respectively, or  
any one of them, is and are hereby authorized, impower-  
ed and required to administer) touching the premisses,  
and thereupon to hear and determine the same ; and in  
case any offender or offenders shall thereupon, by the  
said mayor, recorder or aldermen, or the said justices,  
or one of them, be convicted, and adjudged guilty of  
any such offence, then such offender or offenders shall  
thereby incur and forfeit such penalty as shall be by  
such rules and ordinances set and imposed for the same ;  
and that such warrant or warrants, or other act or acts  
of the said mayor, recorder, aldermen or justices, and  
the act and acts of the water-bailiff, and his assistants,  
and of all constables, headboroughs and other persons,  
in obedience to such warrant or warrants, shall be as va-  
lid, good and effectual in law, to all intents whatsoever,  
as if the same were executed within the proper limits of  
their own city, county or jurisdiction.

VIII. And be it further enacted by the authority  
aforesaid, That if any witness or witnesses, who shall be  
summoned in pursuance of this act to appear before the  
said mayor, recorder, aldermen or justices of the peace,  
or any one of them, within their respective jurisdictions  
aforesaid, shall neglect or refuse to appear according to

A. D. 1757 the direction of the summons, or appearing shall refuse to be examined on oath touching the premises, and no just excuse shall be offered for such neglect or refusal, every person so offending, on proof on oath being made of such summons having been served on him, her, or them, shall for every such offence forfeit and lose such sum of money, not exceeding five pounds nor less than twenty shillings, as the said mayor, recorder, aldermen or justices, or any one of them, within their respective jurisdictions, shall by warrant under his hand or their hands order or direct.

Officer neglecting his duty, forfeits any sum not exceeding 5l.

IX. And be it further enacted by the authority aforesaid, That if any assistant or assistants of the water-bailiff of the said city, or any peace-officer, shall wittingly or willingly neglect or refuse to serve or execute any warrant or warrants to him or them directed in pursuance of this act, or shall otherwise wilfully or wittingly omit the performance of his or their duty in the execution of this act, and shall be thereof convicted by the oath of one or more credible witness or witnesses, before the said mayor, recorder, or any such alderman, or justice as aforesaid, within their respective jurisdictions, every such assistant or peace-officer so offending shall forfeit and lose any sum of money not exceeding five pounds, as the said mayor, recorder, alderman or justice, or any one of them, within their respective jurisdictions shall think reasonable and direct.

Penalty 5l. on water-bailiff, or assistant, taking any gratuity, &c.

X. And be it further enacted by the authority aforesaid, That if the said water-bailiff, or any of his assistant, shall at any time hereafter receive any sum of money, gratuity or reward whatsoever, from any person or persons, to prevent, delay or hinder any prosecution; or compound for, or wilfully conceal any offence to be committed contrary to this act, and shall be thereof convicted by the oath of one or more credible witness or witnesses, before the said mayor, recorder or aldermen

of the said city, or any one of them, (and which oath A. D. 1451. the said mayor, recorder and aldermen, or any one of them, is and are hereby authorized to administer) such water-bailiff and his assistants respectively, for every such offence, shall forfeit and lose the sum of five pounds.

‘ XI. And for the better and more easy recovery of the several penalties and forfeitures to be incurred by disobedience to this act, and the powers therein contained, and disposing of the said forfeitures, where no particular provision is already made herein ;’ be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the mayor of the said city Recovery and application of forfeiture. of London for the time being, recorder and aldermen of the said city, or any one of them, within the said city or liberties thereof, or within the jurisdiction aforesaid, and to and for any other of his majesty’s justices of the peace, or any one of them, within their respective counties, on the conviction of any person or persons for any offence or offences committed contrary to the true meaning of this act, the forfeiture not being paid, to issue a warrant or warrants under his hand and seal, or their hands and seals respectively, directed to the assistant or assistants of the said water-bailiff, or any peace-officer, within their respective jurisdictions, empowering him or them to make distress of the goods and chattels of the said offender or offenders, for the sum to be levied by any such warrants ; and to cause such goods and chattels, after five days from the distress taken, to be appraised and sold, rendering the overplus, if any, after deducting the forfeiture and the costs and charges of the distress and sale, to the owners ; which charges shall be ascertained by the magistrate before whom such offender or offenders shall have been so convicted ; and for want of such distress and non-payment, then it shall be lawful for the said mayor, recorder, aldermen and justices, or any one of them, within their respective jurisdictions, by



A. D. 1757. warrant under his hand and seal, to commit such offender or offenders to the common gaol or house of correction of the city or county where such offender or offenders shall be convicted, there to remain for the space of three months from the time of such commitment, unless payment shall be made of the same penalty, costs and charges, before the expiration of the said three months; and one moiety of all such penalties and forfeitures, when recovered, shall be paid to the informer, and the other moiety thereof shall be paid to the treasurer of Greenwich Hospital aforesaid, for the use of the said hospital; but in case any such offender or offenders shall think him or themselves aggrieved by such conviction, and shall within the said five days enter into a recognizance with two good and sufficient sureties, in the penal sum of twenty pounds, before such magistrate or magistrates, before whom he, she or they shall be so convicted, (which said recognizance shall be returned, within the space of fourteen days, to the said court of the mayor and aldermen) conditioned for his personal appearance at some court of the said mayor and aldermen of the said city, to be holden within six weeks after the acknowledging such recognizance, or at the next court of conservancy to be held for the county in which such offence shall be committed, and to stand to and abide such order as shall be made in the premisses by such court, then the goods so distrained shall be returned to the party or parties from whom the same were taken; and the said court of mayor and aldermen, or court of conservancy, is hereby impowered and directed upon a petition of appeal, presented to them by the party or parties so convicted, complaining of such conviction, to appoint a time for the hearing and determining the matter of such appeal, and thereupon to cause notice to be given to the parties, and to summon witnesses to attend at the time so appointed, and then to examine such wit-

If offender aggrieved, shall enter into a recognizance to abide the order of the court.

Districts to be returned; and court to hear and determine such appeal,

nesses upon oath, and finally to hear and determine the A. D. 1757.  
 matter of such appeal or complaint, and make such order  
 therein, as to such court shall seem meet; and the said <sup>and to miti-</sup>  
 courts respectively shall, and they are hereby impower- <sup>gate, &c.</sup>  
 ed to order all or any of the penalties laid on or incurred  
 by any of the parties complaining, to be mitigated, or to  
 vacate or set aside such conviction or convictions, or  
 otherwise to ratify and confirm the same, and at their  
 discretion to award such reasonable costs to be paid by  
 the appellant, as to them shall seem meet; and the said  
 court of mayor and aldermen, or court of conservancy,  
 may, on forfeiture of any such recognizance, estreat the  
 same into his majesty's court of exchequer, there to be  
 proceeded upon and executed in the same manner as  
 estreats returned to the said court of exchequer, from any  
 court of conservancy held by the said mayor of the said  
 city, are.

XII. And be it further enacted by the authority  
 aforesaid, That the mayor, recorder, or any aldermen or  
 justice before whom any person shall be convicted in  
 manner prescribed by this act, shall cause such respec-  
 tive conviction to be drawn up in the form, or to the  
 effect following; that is to say,

‘ BE it remembered, that on this Form of con-  
 To wit. ‘ day of viction. in the year of  
 ~~~~~ ‘ his majesty's reign, *A. B.* is convicted before  
 ‘ me, one of his majesty's justices of the peace  
 ‘ for the city or county of [as  
 ‘ *the case shall happen to be*] for  
 ‘ *[here set forth the offence]* and I do adjudge  
 ‘ him to pay and forfeit for the same the sum of

‘ Given under my hand and seal the day  
 ‘ and year aforesaid.’

A. D. 1457. And the said mayor, recorder, alderman or justice before whom such conviction shall be had, shall cause the same, so drawn up in the form aforesaid, to be fairly written upon parchment, and transmitted to the court of mayor and aldermen, or court of conservancy, to be filed and kept amongst the records of the said court, to which the same shall be transmitted: and in case any person or persons so convicted shall appeal from the judgment of the said mayor, recorder, or any alderman or justice as aforesaid, to the said court of mayor and aldermen, or court of conservancy, the said court of mayor and aldermen, or court of conservancy, is hereby required, upon receiving the said conviction, drawn up in the form aforesaid, to proceed to the hearing and determination of the matter of the said appeal, according to the directions of this act: any law or usage to the contrary notwithstanding.

Canon. XIII. And be it further enacted by the authority aforesaid, That no writ of certiorari, or other writ or process for removal of any such conviction, or any proceedings thereon, into any of his majesty's courts of record at Westminster, shall be allowed or granted.

If the offender escape out of the jurisdiction, &c. any justice may endorse the warrant, &c. XIV. And it is hereby further enacted, That in case any person, against whom a warrant shall be issued by the said mayor, recorder, or any alderman or justice of the peace, either before or after conviction as aforesaid, for any offence against this act, shall escape, go into, reside, or be in any other county, riding, division, city, liberty, town or place, out of the jurisdiction of such person granting such warrant or warrants as aforesaid: or if the goods and chattels of any offender convicted of any offence in pursuance of this act, shall be in a different county, riding, division, city, liberty, town or place, than where the said party was convicted, or the warrant of distress granted, it shall and may be lawful for the said mayor, recorder, or any alderman as aforesaid, or any justice of the peace of the county, riding,

division, city, liberty, town or place into which such A. D. 1757.  
 person shall escape, either before or after conviction, or  
 where his goods and chattels shall be, after such convic-  
 tion; and they and every of them are hereby required  
 upon proof made upon oath of the hand-writing of the  
 said mayor, recorder, alderman or justice granting such  
 warrant or warrants, to indorse his or their name or  
 names on such warrant; and the same, when so in-  
 dorsed, shall be a sufficient authority to all peace-  
 officers to execute such warrant in such other county, <sup>and peace-  
 officer exe-  
 cute the</sup>  
 riding, division, city, town or place out of the jurisdic- <sup>same.</sup>  
 tion of the person granting the said warrant; and the  
 said mayor, recorder, aldermen and justices respectively,  
 or any one of them, as the case shall happen, after in-  
 dorsing the said warrant, may, on the offender or of-  
 fenders being apprehended and brought before the said  
 mayor, recorder, aldermen or justices, or any one of  
 them, within their respective jurisdictions, proceed to  
 hear and determine the complaint, in the same manner  
 as if it had originally arose within their respective juris-  
 dictions, or may direct the offender to be carried to the  
 person who granted the said warrant, to be dealt with ac-  
 cording to law.

XV. Provided always, and it is hereby enacted and <sup>Rights and  
 privileges of  
 the city of  
 London re-  
 served.</sup>  
 declared, That nothing in this act contained shall ex-  
 tend or enure to prejudice or derogate from the rights,  
 privileges, franchises or authority of the city of Lon-  
 don, or any rights, privileges or authority exercised by  
 the mayor of the said city for the time being, as conser-  
 vator as aforesaid; or to prohibit, defeat, alter or dimi-  
 nish any power, authority or jurisdiction, which, at the  
 time of making this act, the mayor, commonalty and ci-  
 tizens of London, or the mayor of the city of London, as  
 conservator of the said river of Thames and waters of  
 Medway, did or might lawfully claim, use or exercise;  
 and further, that it shall and may be lawful to and for



A. D. 1757. the said mayor of the said city for the time being, in like manner as he hath used to do in other cases, to inquire of, hear and determine, by presentment or indictment taken before him as conservator of the said river and waters, all unlawful and undue fishing, and taking and destroying fish, and all other offences contrary to such rules, orders and ordinances as shall be made by the said court of mayor and aldermen, and allowed and approved of as aforesaid ; and upon conviction of any such offender or offenders, to impose a fine on him, her or them for the said offence, not exceeding the penalties which shall be inflicted in and by the said rules, orders or ordinances ; and which fine or fines, when levied and recovered, shall be applied and distributed in like manner as the penalties inflicted by the said court of conservancy have been usually applied and distributed ; but no person shall be punished twice for one and the same offence.

Limitation of actions. XIV. And be it further enacted by the authority aforesaid, That all actions, suits and informations, which shall be commenced and prosecuted against any person or persons for any thing which he, she, or they shall do, or cause to be done in pursuance of this act, shall be commenced, sued or prosecuted within six months next after the cause of action shall accrue ; and all such persons against whom any such actions, suits or informations shall be commenced, sued or prosecuted, shall and may plead the general issue, and give this act and the special matter in evidence ; and if in any such suit, the plaintiff or prosecutor shall become nonsuit, or shall forbear prosecution, or discontinue his suit ; or if a verdict shall pass, or judgment shall be given against him upon a demurrer, then and in any such case, the defendant or defendants shall recover double costs, for which he or they shall have like remedy, as when costs by law are awarded ; and this act shall be taken and allowed in all

General issue.

Double costs.

courts within this kingdom as a public act; and all judges and justices are hereby required to take notice thereof as such, without the same being specially pleaded. A. D. 1757.  
Public act.

XVII. And be it further enacted by the authority aforesaid, That the statute made in the twenty-fourth year of his present majesty's reign, intituled, ' an act for the rendering justices of the peace more safe in the execution of their office; and for indemnifying constables and others, acting in obedience to their warrant,' so far as the said act relates to the rendering justices of the peace more safe in the execution of their office, shall extend and be construed to extend to the mayor, recorder and every alderman of the said city of London, and to every justice and justices of the peace, acting under the authority or in the execution of this act; and no action or suit shall be had or commenced against, nor any writ sued out, or copy of writ served upon the said water-bailiff, his assistant or assistants, or any other officer or officers, for any thing done in the execution of this act, until notice in writing shall have been given to him or them, or left at his or their usual place of abode, by the attorney for the party commencing such action, or suing out such writ, one month before the commencing such action, or suing out or serving the copy of the said writ; which said notice in writing shall contain the name and place of abode of the person who is to bring such action, together with the cause of action or complaint; and the name and place of abode of the said attorney shall be underwrote or indorsed thereon; and the said water-bailiff, his assistant or assistants, and the said other officer or officers shall be at liberty, and may by virtue of this act, at any time within one calendar month after such notice, tender or cause to be tendered any sum or sums of money, as amends for the injury complained of to the party complaining, or to the said

Act 21 Geo. 2.  
c. 44. extended to magistrates acting under this act;  
  
and no action is issuable against an officer, till notice be given him thereof.

A. D. 1757. attorney, and if the same is not accepted, the defendant or defendants in such action or actions may plead such tender in bar of such action or actions, together with the general issue, or any other plea, with leave of the court; and if upon issue joined upon such tender, the jury shall find the amends tendered to have been sufficient, the said jury shall find a verdict for the defendant or defendants; and in such case, or if the plaintiff shall become nonsuit, or discontinue his action; or if judgment shall be given for the defendant or defendants, upon demurrer, the defendant or defendants shall be entitled to double costs; and if the jury shall find that no such tender was made, or that the amends tendered were not sufficient; and also shall find against the defendant or defendants, on such other plea or pleas by them pleaded, the said jury shall find a verdict for the plaintiff, and such damages as they shall think proper: for which the said plaintiff shall have judgment, together with his costs of suit.

Reservation  
of rights, &c.

XVIII. Saving always to the king's most excellent majesty, his heirs and successors, and all bodies polittick and corporate, and to the high court of admiralty, and all other courts and persons, all fines, forfeitures, penalties, amerciaments, and wrocks of sea, which of right have been reserved and become due and payable to the said courts and persons respectively, for and in respect of the said fishery or dredging, or otherwise, and all rights, titles, estates, immunities, privileges or franchises whatsoever, in as full and ample manner as the same were or have been before the making of this act; and also all such right, title, interest, claim, privilege and conservation, and inquiry and punishment of and for the offences aforesaid, as they or any of them lawfully have and enjoy, or of right ought to have and enjoy by any manner of means: any thing in this act to the contrary notwithstanding.

XIX. Provided always, and be it enacted by the authority aforesaid, That this act, or any thing herein contained, shall not extend, or be construed to extend, to prejudice or derogate from any of the rights of the admiralties or vice-admiralties of Kent or Essex, or any piscaries or fishings belonging to or appertaining to the said city of London, or any other city or town-corporate, or any lords of manors, proprietors, owners or occupiers of any rivers, creeks, streams or fisheries adjacent to or within any part of the said limits, or to the rights of any other person or persons within the limits aforesaid. A. D. 1757.

XX. Provided also, That nothing in this act contained shall extend, or be construed to extend, to any fisherman or drudgerman who now do or shall hereafter inhabit or dwell in any of the cinque ports or their members, or in the city of Rochester, or towns or places of Strood, Chatham, Frindsbury, Gillingham, Milton, Queenborough, Feversham, Whitstaple, or the places adjacent; but that such fishermen and drudgermen shall and may use and exercise their trades of fishing and drudging, and selling, in as full and ample manner as they have heretofore lawfully done, to all intents and purposes, as if this act had never been made. Places and persons exempted.

XXI. Provided always, and it is hereby further enacted, That nothing herein contained shall extend, or be construed to extend, to impower or authorize the said mayor, court of mayor and aldermen, the water-bailiff, or any other person whatsoever, to grant any licence or licences, or to make any rules, orders or ordinances whereby any licence or licences shall be required to be taken by any fisherman, drudgerman or other person, for going out to fish, fishing, drudging or taking fish in any manner or way, or whereby any gratuities, rewards or compensations, under any pretence or denomination whatsoever, shall be paid or payable by any fisherman, Fishermen not liable to take out licences, &c.



A. D. 1757. drudgerman, or other such person to the water-bailiff, or his successors, or to any other person or persons ;  
 See further 30 Geo. 2. c. 30. or whereby any such fisherman, drudgerman, or other  
 33 Geo. 2. c. 27. such person shall be obliged to appear before the said  
 2 Geo. 2. c. 15. mayor, water-bailiff or other person, to enter his or their several name or names, in any register or other book, or whereby any such fisherman, drudgerman or other person as aforesaid, shall be limited or restrained from keeping any number of boys in any one boat, as such fisherman, drudgerman, or other person shall judge proper ; any thing in the said act of the ninth year of her late majesty Queen Anne, or any other statute, law, custom or usage to the contrary in any wise notwithstanding.

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A. D. 1759.

33 GEO. 2. C. 27. A. D. 1759.

AN ACT TO REPEAL SO MUCH OF AN ACT PASSED IN THE TWENTY-NINTH YEAR OF HIS PRESENT MAJESTY'S REIGN, CONCERNING A FREE MARKET FOR FISH AT WESTMINSTER, AS REQUIRES FISHERMEN TO ENTER THEIR FISHING-VESSELS AT THE OFFICE OF THE SEARCHER OF THE CUSTOMS AT GRAVESEND ; AND TO REGULATE THE SALE OF FISH AT THE FIRST HAND IN THE FISH-MARKETS IN LONDON AND WESTMINSTER ; AND TO PREVENT SALESMEN OF FISH BUYING FISH TO SELL AGAIN ON THEIR OWN ACCOUNT ; AND TO ALLOW BRET AND TURBOT, BRILL AND PEARL, ALTHOUGH UNDER THE RESPECTIVE DIMENSIONS MENTIONED IN A FORMER ACT, TO BE IMPORTED AND SOLD ; AND TO PUNISH PERSONS WHO SHALL TAKE OR SELL ANY SPAWN, BROOD, OR FRY OF FISH, UNSIZEABLE FISH, OR FISH OUT OF SEASON, OR SMELTS UNDER THE SIZE OF FIVE INCHES ; AND FOR OTHER PURPOSES.

[This act being of a local nature and very voluminous, the reader is referred to the Statutes at Large.]

A. D. 1760.

I GEO. 3. C. 21. A. D. 1760.

AN ACT FOR THE BETTER PRESERVATION OF THE GAME IN THAT PART OF GREAT BRITAIN CALLED SCOTLAND; AND FOR REPEALING PART OF AN ACT PASSED IN THE TWENTY-FOURTH YEAR OF THE REIGN OF HIS LATE MAJESTY, FOR THE BLTTER PRESERVATION OF THE GAME IN THAT PART OF GREAT BRITAIN CALLED SCOTLAND.

For the better preservation of the game in that part of Great Britain called Scotland, may it please your most excellent majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That no person in Scotland shall, upon any pretence whatsoever, take, kill, destroy, carry, sell, buy, have in his or her possession or use, any moor-fowl or tarmagan, between the tenth day of November and the twenty-fifth day of July, in any year; nor any partridge between the first day of February and the first day of September, in any year; nor any pheasant between the first day of February and the first day of October, in any year; nor any heath-fowl, commonly called black game, between the first day of December and the twenty-fifth day of August, in any year.

Game may not be taken within the times here mentioned, &c.

II. And be it further enacted by the authority aforesaid, That every person transgressing this act in any of the aforesaid cases, shall, for every bird so taken, killed, destroyed, carried, sold, bought, found in their possession or used, forfeit and pay the sum of five pounds sterling; and, in case of insolvency, the party offending shall suffer imprisonment for the space of two months.

on penalty of 5l. or two months imprisonment.

A. D. 1760.

Offences how  
to be en-  
quired into  
and deter-  
mined.

III. And be it further enacted by the authority aforesaid, That all offences against this act shall and may be enquired into and determined either by the oath or oaths of one or more credible witness or witnesses, or by the confession or oaths of the parties accused, before any two or more of his majesty's justices of the peace, or before the sheriff depute of the county where the offence shall be committed, or where the offender shall be found; and that all prosecutions for offences against this act shall be carried on, either at the instance of the fiscal of court, or of any other person who will inform or complain.

Application  
of the for-  
feitures.

IV. And be it further enacted by the authority aforesaid, That one moiety of the forfeitures to be incurred for any offence against this act, shall, when recovered, be paid to the informer or prosecutor, and the other moiety shall be applied to the use of the poor of the parish or place where the offence shall be committed.

Persons ag-  
grieved may  
appeal to the  
quarter-ses-  
sions, or  
lords of jus-  
ticiary.

V. Provided always, That any person aggrieved by the judgment of any justices of the peace, or sheriff depute as aforesaid, may have liberty to appeal to the next general or quarter-sessions, in case such judgment was given by any justices of the peace as aforesaid, or to the lords of justiciary in their next circuit court, or (where there are no circuit courts) to the court of justiciary at Edinburgh, in case the judgment complained of was given by the sheriff depute of any county; and that the determination of the said general or quarter-sessions, or of the said circuit court, shall be final and conclusive to all parties.

Act not to  
extend to  
pheasants or  
partridges  
kept in  
mews, &c.

VI. Provided always, That nothing in this act shall extend to any pheasant or partridge, which shall be taken in the seasons allowed by this act, and kept in any mew or breeding-place.

Clause in act  
24 Geo. 2.  
c. 34. repeal-  
ed.

VII. And be it further enacted by the authority aforesaid, That from and after the passing of this present act, so much of an act passed in the twenty-fourth

year of the reign of his late majesty King George the A. D. 1760.  
 Second, intituled, ‘an act for the better preservation of  
 ‘the game in that part of Great Britain called Scotland,’  
 as limits the time for killing any moor-fowl, partridge,  
 or heath-fowl, shall be and is hereby declared to be  
 repealed.

2 GEO. 3. C. 15. A. D. 1761.

A. D. 1761.

AN ACT FOR THE BETTER SUPPLYING THE CITIES OF  
 LONDON AND WESTMINSTER WITH FISH, AND TO  
 REDUCE THE PRESENT EXORBITANT PRICE THERE-  
 OF ; AND TO PROTECT AND ENCOURAGE FISHERMEN.

‘Whereas the better supplying the cities of London General li-  
 ‘and Westminster with fish, and encouraging fisher- cence to any  
 ‘men and others to employ themselves in fishing on the person to buy  
 ‘sea-coasts, and in the navigable rivers of Great Britain, fish in season,  
 ‘will tend to reduce the present exorbitant price of fish : and sizeable,  
 ‘may it therefore please your majesty, that it may be &c.  
 ‘enacted ;’ and be it enacted by the king’s most excel-  
 lent majesty, by and with the advice and consent of the  
 lords spiritual and temporal, and commons, in this pre-  
 sent parliament assembled, and by the authority of the  
 same, That from and after the passing of this act, it  
 shall be lawful for any person, although not brought up  
 in the trade of a fishmonger, to buy (subject to and un-  
 der the restrictions herein-after contained) at any market,  
 sea-coast, creek, port, haven, bank of any river, or  
 place, in Great Britain, any fish in season, which shall  
 not be unsizeable, or under the dimensions the same  
 respectively, by the laws now in force, are allowed to be  
 sent to the city of London, paying the usual and accus-  
 tomed dues at the places where any such fish shall be so  
 purchased ; and afterwards to sell again all such fish in



A. D. 1761. public or fixed sheps, stalls, or houses in any other market in Great Britain, where fish or flesh are or usually have been sold, in manner by this act prescribed, paying only the usual stallage or market dues paid at every such market, without incurring any penalty or forfeiture; any law, statute, custom, or usage to the contrary thereof in any wise notwithstanding.

II. Provided always, and be it enacted by the authority aforesaid, That nothing herein-before contained shall extend, or be construed or taken to extend, to permit, empower, or authorize any person or persons to sell, or expose to or for sale, any fish in Covent-garden market, or in any of the precincts thereof, in the county of Middlesex.

Such fish not to be resold before brought to where consigned, &c.

III. And be it further enacted by the authority aforesaid, That no fish allowed to be bought as aforesaid shall be sold again by the first purchaser thereof, or any of his or her agents or servants, before such fish shall have been conveyed by land-carriage, or otherwise, to the cities of London or Westminster, or such other places in Great Britain, as the proprietor or proprietors thereof shall think fit, from time to time, to consign the same to; under pain that every one who shall offend in the premisses shall, for every such offence, forfeit and pay the sum of twenty pounds, to be recovered and applied in manner herein-after mentioned.

IV. And be it further enacted by the authority aforesaid, That all such fish, allowed to be purchased as aforesaid, shall be permitted to be, from time to time, sent and conveyed to the place or places to which the proprietor or proprietors thereof shall think fit to consign the same, without being subject or liable to be stopped in any city, market-town or place, in order to be sold or exposed to sale there, under pretence of any custom or usage whatsoever.

Carriages to V. And, for the more expeditious conveyance of fish

by land-carriage, be it also enacted by the authority A. D. 1761.  
 aforesaid, That every carriage which shall be used for <sup>carry fish</sup>  
 the conveyance of such fish as aforesaid, shall only carry <sup>only.</sup>  
 fish, allowed to be brought as aforesaid, therein; with the  
 necessary package and implements which shall belong to  
 such carriage; and shall be marked on the outside,  
 ‘ fish machine only;’ and shall have the name or names,  
 and place or places of abode of the respective owner or  
 owners thereof, entered at the office of the commissioners  
 for licensing hackney-coaches; and for every such en-  
 try only one shilling shall be paid to the clerk there;  
 and the said commissioners are hereby required to re-  
 ceive every such respective entry, and to cause the same  
 to be registered in the said office; and afterwards the  
 respective number of every such respective carriage  
 shall be marked on some conspicuous part of the outside  
 thereof, in large figures, painted, or else shall be put on  
 lead or other metal, and shall be fixed in the front, or on  
 one of the shafts, or some other conspicuous part of  
 every such respective carriage; and that no fish-car-  
 riage shall be deemed or taken to be a common stage  
 waggon, wain, or cart: and if any one shall neglect to  
 comply with and perform what is herein-before directed,  
 touching the marking, registering, numbering, and  
 keeping the number of every such respective carriage on  
 some part thereof, and shall be convicted of any such  
 neglect, in manner herein-after mentioned, he shall for-  
 feit and pay for every such neglect, the sum of forty  
 shillings; to be levied, recovered, and applied as herein-  
 after is directed.

VI. And be it further enacted by the authority afore-  
 said, That every such fish-carriage, numbered and  
 marked as aforesaid, shall be permitted to travel, pass, or  
 be drawn on any turnpike-road, by any number of  
 horses in pairs not exceeding four, or by any single

A. D. 1761. horse, or by any number of horses at length not exceeding three, although the fellies of the wheels of any such fish-carriage shall not be of the breadth or gauge of nine inches from side to side; and that every such fish-carriage shall only pay the like toll, at every turnpike-gate or bar through which every such fish-carriage shall pass, as post-chaises, or other chaises drawn by a like number of horses, or by a single horse, by the laws now in force are subject and liable to pay there.

VII. And be it also enacted by the authority aforesaid, That every such fish-carriage as aforesaid shall be allowed to travel, pass, and be drawn on Sundays and holidays, on any road, whether laden or returning empty; and that the horse or horses which shall return from drawing any such fish-carriage, although rode on by any driver of any such fish-carriage, or drawing back any empty fish-carriage, shall also be allowed to pass on Sundays and holidays on any road, without any driver of any such fish-carriage, or the rider on any such horse as aforesaid, incurring any penalty for so travelling therewith.

VIII. Provided always, and be it enacted by the authority aforesaid, That no toll shall at any time be paid for any such fish-carriage returning without fish, or for any horse or horses which shall draw the same back empty, for passing on any turnpike-road, or through any turnpike-gate or bar, or for any horse or horses returning from drawing any such fish-carriage laden as aforesaid, although such horse or horses, or any of them shall be rode on by any driver of any such fish-carriage and although such horse or horses shall not draw back any such empty fish-carriage.

IX. And be it further enacted by the authority aforesaid, That if any person shall put any game, or any other thing except fish as aforesaid, and the baskets and  
 And if any thing besides fish, &c. be put therein,

other necessary package in which the same shall be packed, and the necessary implements of every such fish-carriage, into any such fish-carriage to be conveyed thereby; every person, other than the driver of any

A. D. 1761.  
persons putting in same shall forfeit 5l.

such fish-carriage, who shall so put any game, or other thing than fish, and the baskets and other necessary package and implements as aforesaid, into any such fish-carriage, and to be thereby conveyed, shall, on being convicted thereof in manner herein-after mentioned, forfeit and pay for every such offence the sum of five pounds, to be levied, recovered, and applied in manner herein-after specified; and if the driver of any such fish-carriage shall take up, or suffer any passenger, game, or other thing except fish, and the baskets and other necessary package and implements as aforesaid, to be at any time carried or conveyed in or by any such fish-carriage, every driver of every such fish-carriage, who shall so offend in the premisses, and be thereof convicted in manner herein-after mentioned, shall, for every such offence, forfeit and pay the sum of forty shillings, to be recovered and applied in manner herein-after mentioned; and if, on the conviction of any driver of any such fish-carriage, the sum forfeited shall not be forthwith paid, the justice or justices before whom any such driver of any such fish-carriage shall be convicted, shall, by warrant under his hand and seal, or their hands and seals, commit every such driver of any such fish-carriage, who shall be so as aforesaid convicted, to the house of correction of the county, city or place in which the offence for which any such driver was convicted, or where any such driver shall be apprehended, there to remain and be kept to hard labour for any time not exceeding one month, as any justice or justices shall order, unless the money forfeited shall be sooner paid.

X. And be it further enacted by the authority aforesaid, That if the owner or any other person who shall

If bulk be broke, &c. before brought



A. D. 1761. have the care or conduct of any such fish-carriage as within the aforesaid, which after the passing this act shall be loaded bills of mor- with fish as aforesaid, and consigned for the supply of tality, or the cities of London or Westminster, shall break bulk they are ex- before the same shall have been brought within the posed in the weekly bills of mortality, or sell or expose to sale any of the markets, of- the fish which shall be loaded in any such fish-carriage, fender to for- before the same shall have been brought to the cities of feit 101. London or Westminster, or within the weekly bills of mortality, and exposed there to or for sale in manner herein-after directed, he, she or they who shall so offend in the premisses, shall, on being thereof convicted in manner herein-after mentioned, forfeit and pay for every such offence the sum of ten pounds, to be levied, recovered and applied in manner herein-after mentioned.

fish after be- XI. And be it also enacted by the authority afore-  
ing brought said, That all fish as aforesaid, which shall be brought  
up to be by land carriage to the cities of London or Westmin-  
sorted, &c. ster, or to any other place within the weekly bills of  
mortality, shall, with all convenient speed, after the  
same shall be so brought there, be sorted, and the next  
morning at farthest after the same shall be so brought  
there, shall be openly and publicly offered and exposed  
to sale in some public market or markets within the  
weekly bills of mortality (except such next day shall  
happen to be a Sunday, and in such case, then on Mon-  
day morning next following) and that, until such fish  
as aforesaid shall be so exposed to sale in some public  
market or markets as aforesaid, no part thereof shall be  
sold, or offered to or for sale, by retail, upon pain that  
every person who shall offend in the premisses, and shall  
be thereof convicted in manner herein-after mentioned,  
shall forfeit and pay, for every such offence, the sum of  
ten pounds, to be levied, recovered and applied in man-  
ner herein-after mentioned.

XII. Provided always, and be it enacted, That no- A. D. 1761.  
 thing in this act contained shall be construed to prohibit Mackerel  
 the selling any mackerel, which shall be brought by any may be sold  
 such fish-carriage as aforesaid, before or after divine ser- on Sundays.  
 vice on a Sunday.

XIII. And be it likewise enacted by the authority All contracts  
 aforesaid, That all contracts made by or with any per- vacated after  
 son or persons for any fish, except salmon and lobsters, 1 May, 1762.  
 from and after the first day of May, one thousand seven  
 hundred and sixty-two, shall be and are hereby declared  
 to be void, so far as the same shall relate to, or be in-  
 tended to take effect at any time subsequent to the said  
 first day of May, one thousand seven hundred and sixty-  
 two; and the party and parties to every such contract  
 and contracts is and are hereby respectively discharged  
 from all penalties and forfeitures he or they may incur  
 by reason of the non-performance of any such contract  
 or contracts: and if, from and after the said first day of  
 May, one thousand seven hundred and sixty-two, any  
 person or persons shall enter into or make any contract  
 or contracts for buying up any fish, except salmon and  
 lobsters, before the same shall be first brought to an open  
 market, or some usual place for the sale of fish, and be-  
 fore the same shall be there exposed in the ordinary  
 manner, and for the usual time fish shall be there ex-  
 posed for public sale, every such contract and contracts  
 is and are hereby declared to be absolutely void, and  
 every party thereto shall forfeit and pay, for every such  
 contract which he or she shall be a party to, or concern-  
 ed in, on being convicted thereof in manner herein-after  
 mentioned, the sum of fifty pounds, to be recovered, le-  
 vied and applied in manner herein-after mentioned.

XIV. Provided always, and be it also enacted by No contract  
 the authority aforesaid, That after the said first day of for salmon  
 May, one thousand seven hundred and sixty-two, no and lobsters  
 contract or agreement which shall be made or entered in force  
 longer than one year.

A. D. 1761. into for the buying of any salmon or lobsters which shall be taken in any river, or in any of the seas, or on any of the sea-coasts of Great Britain, shall be or continue in force for any longer time than for one year, to be computed from the date of every such respective contract or agreement which shall be entered into in writing; and if not entered into in writing, then only for one year, to be computed from the time of making or entering into every such parol contract or agreement respectively.

No person may employ or be employed in buying fish brought for sale, to be afterwards divided amongst fishmongers, or others, to be sold, &c.

XV. And be it likewise enacted by the authority aforesaid, That no person or persons shall, at any time after the said first day of May, one thousand seven hundred and sixty-two, employ or be employed by any other person or persons in buying, or to buy, in or at any market in the city of London, or in the city of Westminster, or elsewhere within the weekly bills of mortality, any fish which shall be brought there to be sold, to be divided by lots or in shares amongst any fishmongers or other persons, in order to be afterwards put to sale again, or sold by retail; nor shall any fishmonger or other person, at any time after the said first day of May, one thousand seven hundred and sixty-two, buy in any market in London, or in the said city of Westminster, or elsewhere within the weekly bills of mortality, any fish, but what shall be for his own sale or use only; upon pain that every person who shall be convicted of any such offence, in manner hereby directed, shall forfeit and pay the sum of twenty pounds for every such offence, to be levied, recovered and applied in the manner herein-after directed.

No person may refuse to sell, &c.

XVI. And be it further enacted by the authority aforesaid, That if any proprietor of fish, or any salesman, or person intrusted or employed to sell any fish in any public market, shall refuse to sell, or shall enter into any agreement or confederacy not to sell, to or for the use of any particular person or persons, any fish which shall

be brought or exposed to or for sale at or in any such A. D. 1761. public market; then and in every such case every person who shall so offend in the said premisses, and shall be thereof convicted in the manner by this act directed, shall, for every such offence, forfeit and pay the sum of twenty pounds, to be levied, recovered and applied in manner hereby directed.

XVII. And be it further enacted by the authority <sup>Fish brought</sup> aforesaid, That all fish of any of the respective sorts <sup>for sale to the</sup> herein-after specified, which, after the said first day of <sup>London mar-</sup> <sup>ket, shall be</sup> May, one thousand seven hundred and sixty-two, shall <sup>openly sold</sup> be brought for sale to the cities of London or Westminster, <sup>at the first</sup> or within the weekly bills of mortality, shall be <sup>hand, &c.</sup> openly and publicly exposed for sale at the first hand; and shall be sold in no greater number or quantity of fish in any one lot or parcel, or by any greater weight of fish in any one lot or parcel, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock, or in any other market within the weekly bills of mortality, than herein-after is directed and prescribed touching the same respectively; and that every lot or parcel of such fish as aforesaid, shall consist only of one sort of fish, and shall not be composed of two or more different sorts of fish; that is to say,

All fresh salmon, sturgeon, large fresh cod, skait, <sup>The species</sup> pike, turbot, bret, bril, pearl, kingston, ling, and dorys, <sup>of fish, num-</sup> by the same single fish; all half fresh cod, not exceed- <sup>ber and</sup> quantity, al-  
ing two in any one lot; all quarter fresh cod, not ex- <sup>lowed to be</sup> sold in a lot.  
ceeding four in any one lot; all mullets, cole-fish, salmon-trout, and other trout, not exceeding two in any one lot; all small cod, not exceeding twenty-four in any one lot; in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock; and, in any other market within the weekly bills of mortality, not exceeding eight in any one lot:



A. D. 1761. All small pike, not exceeding six in any one lot, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock : and, in any other market within the weekly bills of mortality, not exceeding four in any one lot :

All large haddock, not exceeding four in any one lot, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock ; and, in any other market within the weekly bills of mortality, not exceeding two in any one lot :

All small haddock, not exceeding twenty-four in any one lot, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock ; and, in any other market within the weekly bills of mortality, not exceeding eight in any one lot :

All perch, above six inches long from the eye to the fork of the tail thereof, not exceeding twelve in any one lot, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock ; and, in any other market within the weekly bills of mortality, not exceeding eight in any one lot :

All carp, gurnet, tench, and sea-bass, not exceeding six in any one lot, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock ; and, in any other market within the weekly bills of mortality, not exceeding four in any one lot :

All thornbacks, not exceeding two in any one lot, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock ; and, in any other market within the weekly bills of mortality, not exceeding one in any one lot :

All large soals, not exceeding four pair in any one lot, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock : and, in any other market within the weekly bills of mortality, not exceeding two pair in any one lot :

All small soals, not exceeding eight pair in any one lot, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock ; and, in any other market within the weekly bills of mortality, not exceeding four pair in any one lot : A. D. 1761.

All mackarel, whittings, whiting-pouts, plaice, dabbs, herrings, pilchards, garb-fish, flounders, and maids, not exceeding sixty in any one lot, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock ; and, in any other market within the weekly bills of mortality, not exceeding thirty in any one lot :

All smelts, not exceeding fifty-two in any one lot, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock ; and, in any other market within the weekly bills of mortality, not exceeding twenty-six in any one lot :

All eels, not exceeding twenty pounds weight in any one lot, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock ; and, in any other market within the weekly bills of mortality, not exceeding ten pounds weight in any one lot, unless any single fish shall exceed that weight :

All large lobsters and crabs, not exceeding, of either sort, in any one lot, twenty in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock ; and, in any other market within the weekly bills of mortality, not exceeding ten of either sort in any one lot :

All small lobsters and crabs, not exceeding, of either sort, in any one lot, forty, in Billingsgate-market, or within one hundred and fifty yards of Billingsgate-dock ; and, in any other market within the weekly bills of mortality, not exceeding twenty of either sort in any one lot :

And if any person or persons shall sell or buy any of the

A. D. 1761. fish aforesaid, at the first hand, in any market or markets in the city of London, or within one hundred and fifty yards of Billingsgate-dock, or in any market in the city of Westminster, or within the weekly bills of mortality, in any lot or parcel, containing any greater number of any sort of fish as aforesaid, in any such lot or parcel, or any greater weight of eels in any lot or parcel than is herein-before directed and appointed to be sold in any one lot or parcel : or if any one shall sell, or offer for sale, in any such lot or parcel, more than one sort of any of the fish herein-before specified ; he, she, or they, who shall so offend in the premisses, and be convicted of any such offence in manner herein-after mentioned, shall, for every such offence, forfeit and pay the sum of five pounds, to be levied, recovered and applied in manner herein-after directed.

XVIII. Provided always, That, notwithstanding any thing herein-before contained, it shall be lawful for any person to expose to or for sale, and to sell in Billingsgate-market, or in any other market within the weekly bills of mortality, any of the said herein-before mentioned respective sorts of fish, where more than one is to be contained in any lot as aforesaid, in any smaller number ; or any eels by any lesser weight than herein-before is prescribed for the selling in any one lot any of the said respective sorts of fish herein-before specified.

XIX. And be it further enacted by the authority aforesaid, That no person or persons, from and after the said first day of May, one thousand seven hundred and sixty-two, shall a second time sell or expose to or for sale in Billingsgate market, or within the space of one hundred and fifty yards from Billingsgate dock, or in any other market in the city of London, or within the weekly bills of mortality, any fish which, in the same day, shall have been before sold in the same market ; but any buyer of fish in any of the said markets may sell

the same again, whilst sound and wholesome, in any A. D. 1761. other place or places whatsoever, any law, custom, or usage to the contrary thereof in any wise notwithstanding; upon pain that every one who shall offend in the premisses, and shall be thereof convicted in manner hereby prescribed, shall, for every such offence, forfeit and pay the sum of ten pounds, to be levied, recovered and applied in manner herein-after mentioned.

XX. And be it further enacted by the authority afore-said, That from and after the said first day of May, one thousand seven hundred and sixty-two, no person shall sell, or expose to or for sale, at the first hand, in any market in the cities of London or Westminster, or within the limits of the weekly bills of mortality, any of the several sorts of fish herein-before specified, before he, she or they shall have, from time to time, first placed or put up, in some conspicuous manner, on or over the form, bench, stall, or place, at which he or she shall intend to offer or expose for sale, or shall offer or expose for sale any of such fish in any such market, a true particular or account, and in a large, fair, and legible character, and either wrote or printed, distinguishing therein the several species or sorts of all such fish as aforesaid, and the quantity of every sort thereof respectively which he, she or they shall then have, or have been intrusted with or employed to sell in any such market, except as to the number of flounders, plaice, dabbs, mackrell, maids, herrings and pilchards, which shall be brought to any such market for sale; and if, at any time of the morning or day in which any such account shall have been so placed up, and before the market of that day shall be ended or over, any other fish of the species or sorts herein-before mentioned, except as before excepted, shall be brought or sent to any such market as aforesaid to be sold, the person who shall be employed or intrusted to sell the same, before he or

Account of  
the sorts and  
quantity of  
each, in legi-  
ble charac-  
ters, to be  
put up at the  
fish stand.



A. D. 1761. she shall sell, or offer or expose to or for sale, and or any of such other fish, shall add a true account or particular thereof to the account before put up, if he or she had before put up any such account, and if not, shall put up such account thereof as is herein-before directed; and the party or parties hereby directed to put up such account and accounts as aforesaid, shall take care that every such account and accounts shall continue up, where the same shall have been first placed, until all the fish specified therein shall be sold, or the market of the day shall be over or ended, without being defaced or obliterated; upon pain that every one who shall neglect to put up any such account, or shall not continue up such account as hereby is directed, during the time such account ought to continue up, and shall be convicted in manner herein-after prescribed of any such offence, shall, for every such offence, forfeit and pay the sum of five pounds, to be levied, recovered and applied in the manner herein-after mentioned; and that every person who shall be convicted in manner herein-after directed, of wilfully taking down, defacing, obliterating or altering, or causing to be taken down, defaced, obliterated or altered, any such account hereby directed to be placed up as aforesaid, at any time whilst the same, according to the intent of this act, ought to continue up, shall, for every such last-mentioned offence, forfeit and pay the sum of forty shillings, to be levied, recovered and applied in manner herein-after mentioned.

No fisherman, &c. after the arrival of his vessel from fishing, may destroy, or cast away, any of the fish, &c.

XXI. And be it further enacted by the authority aforesaid, That no fisherman, mariner, or other person, who shall be employed on board any fishing-ship, sloop, smack, vessel or boat, shall, after her arrival from fishing, wilfully destroy, or throw or cast away any fish, which any such fishing-ship, sloop, smack, vessel or boat shall have brought from sea, or caught in any

navigable river, that is not unwholesome, perished, or A. D. 1761. unmarketable, except sprats, which shall remain unsold when the market, to which the same shall be sent for sale, shall be ended ; and if any such fisherman, mariner, or other person, shall offend in the premisses, and be thereof convicted in manner herein-after prescribed, every such fisherman, mariner, or other person, who shall be so convicted, shall be committed to the house of correction of the county, city or place in which any such offender shall be convicted or apprehended, there to remain and to be kept to hard labour for any time not exceeding two months nor less than one week, as the justice or justices, before whom any such offender shall be convicted, shall order.

XXII. And be it also enacted by the authority afore-  
 said, That from and after the passing of this act, all  
 and every the person and persons within the four de-  
 grees or descriptions herein-after specified, who shall be  
 employed in the fisheries of these kingdoms, shall be  
 freed and exempted from being impressed into the ser-  
 vice of his majesty, his heirs or successors, other than  
 and except in the cases herein-after excepted ; that is to  
 say, first, every master who shall have the care or con-  
 duct of any fishing-ship, sloop, smack, vessel or boat,  
 which shall be employed in the fishery on any of the sea  
 coasts of Great Britain, or in any of the navigable rivers  
 within Great Britain, and who, or some owner of which  
 fishing-ship, sloop, smack, vessel or boat, shall have, or  
 within six calendar months before the applying for any  
 protection, as herein-after is allowed, shall have had, one  
 or more apprentice or apprentices, under the age of  
 sixteen years each, bound to him, or to any such owner  
 as aforesaid, for a term not less than five years, and  
 which apprentice or apprentices, in pursuance of such  
 binding, actually shall be, or have been, in the service of  
 such master or owner, in the business of a fisherman :

Persons ex-  
 empted from  
 being im-  
 pressed into  
 the king's  
 service.

A. D. 1761. secondly, every such apprentice, not exceeding the number of four apprentices to every such master or owner as aforesaid of any fishing-ship, sloop, smack or vessel, of or above the burthen of thirty tons, and not exceeding the number of two apprentices to every such master or owner as aforesaid, of any fishing-ship, sloop, smack, vessel or boat, under the said burthen of thirty tons, during the time every such respective apprentice as aforesaid shall continue as an apprentice in the actual service of such his master only, or of his representatives or assigns, in the business of a fisherman, and in no other service, and until the respective age of twenty years of every such apprentice who shall so long continue in the fishing-trade: thirdly, one mariner, besides the master and his apprentice or apprentices as aforesaid, who shall be employed to navigate or fish in any fishing-ship, sloop, smack or vessel, of the burthen of ten tons or upwards, on any parts of the sea coasts of Great Britain, during the time such mariner shall continue and be so actually and truly employed in the said fishing service: and, fourthly, any landman who shall enter on board any such fishing-ship, sloop, smack or vessel, of the burthen of ten tons or upwards, and be actually employed in navigating or fishing therein on any part of the sea coasts of Great Britain for and during the space of two years, to be computed from the time of his first going to sea, employed as aforesaid in any such fishing-ship, sloop, smack or vessel, of the burthen of ten tons or upwards, as aforesaid, and to the end of any fishing-voyage he may then be engaged in, and if he shall continue and be so long really and truly employed in such service.

XXIII. And, to secure to the several persons hereinbefore described the benefit intended for them respectively by this act, and to punish the persons who shall act contrary to the true intent and meaning hereof, be

it further enacted by the authority aforesaid, That on A. D. 1761. an affidavit sworn before some justice or justices of the peace, making out that the person or persons named and described in such affidavit come, or is or are within some or one of the descriptions herein-before specified, and inserting therein the tunnage of every such fishing-ship, sloop, smack, vessel or boat, and the port or place to which she belongs, and the name and description of every such master, and the age of every such apprentice, and the term for which every such apprentice shall be bound, and the date of his indenture, and the name, age and description of every such mariner and landman respectively, and the time of every such landman's first going to sea, being offered to the lord high admiral of Great Britain, or to the commissioners for executing the office of lord high admiral of Great Britain for the time being, or any three or more of them, or left at the office of admiralty, the said lord high admiral, or commissioners of the admiralty for the time being, is and are hereby directed and required, with all convenient speed after every such affidavit shall be tendered to him or them, or left at the admiralty-office (unless he or they shall have reasonable cause to suspect the truth of any such affidavit, and in every such case he and they is and are hereby directed to cause enquiry to be made into the truth of the matters contained in every such affidavit), from time to time to grant a separate protection to every such person as aforesaid respectively, during the time he is allowed by this act to be protected, and without any fee or reward to be paid or taken for the same; and every person who shall be impressed contrary to the intent of this act, shall, on producing the protection which shall have been granted to him in pursuance of this act to the commanding-officer, who shall have in his custody, or under his care, any such impressed per-



A. D. 1761. son as aforesaid, be forthwith discharged and released by such commanding-officer.

If any such  
protected  
person shall  
be impressed  
except, &c.

**XXIV.** And be it further enacted by the authority aforesaid, That if, during the continuance of any protection which shall be granted under this act, any person who shall be thereby protected shall be impressed to serve his majesty, his heirs or successors, other than and except in the case of an actual invasion of these kingdoms, or imminent danger thereof, and signified by some order of his majesty or his heirs, or of his or their privy council, to the lord high admiral, or to the commissioners for executing the office of lord high admiral of Great Britain for the time being, and on producing the protection which shall have been so granted to him, to the commanding-officer of the party or gang who shall impress any such person protected as aforesaid; or if offering to produce the same for the inspection of such the commanding-officer, any such commanding-officer shall refuse or neglect to see or examine such protection, or shall detain the same protection from the party entitled thereto, and shall not forthwith discharge the party who shall be so impressed; or if the party so impressed shall be carried on board any ship or vessel of or in the service of his majesty, his heirs or successors, and the captain, or any officer who shall have the command on board any such ship or vessel of or in the service of his majesty, his heirs or successors, shall not, on any such protection granted as aforesaid being produced or tendered to him; or if such protection shall have been taken away from the party to whom it was so granted, at or after his having been so impressed, then, if on an affidavit being made before some justice or justices of the peace that such protection was so granted, and continues in force, and was taken away from the party to whom the same was so granted, either at or after the

time he was impressed, and being tendered to the captain or officer who shall have the command on board any such ship or vessel as aforesaid, such captain, or officer having the command as aforesaid, shall not forthwith discharge the party who shall have been so impressed and brought on shipboard as aforesaid, or if any captain, or officer having command as aforesaid, or any of the crew or company under him, shall take away or detain any such protection granted as aforesaid; then every person, who in any of the said cases shall so offend, except in the cases herein-before excepted, shall respectively forfeit and pay to the party impressed, if not an apprentice, and if an apprentice, then to the respective master of every such apprentice, the sum of twenty pounds, to be recovered and levied in like manner as other forfeitures incurred by this act are herein-after directed to be recovered and levied.

A. D. 1761.

the offender shall forfeit 20l. to the party impressed, not being an apprentice, and if an apprentice, then to his master.

XXV. And be it further enacted by the authority aforesaid, That if any master or owner of any such fishing-ship, sloop, smack, vessel or boat, shall knowingly harbour, entertain or employ, in any such fishing-ship, sloop, smack, vessel or boat, any seaman or landman who shall have deserted from his majesty's service, every such master or owner as aforesaid, on being convicted of any such offence in manner herein-after mentioned, shall, for every such offence, forfeit and pay the sum of twenty pounds, to be levied, recovered and applied in manner herein-after specified.

The master, &c. of any fishing-vessel, knowingly harbouring, &c. a deserter, forfeits 20l.

XXVI. And be it further enacted by the authority aforesaid, That all justices of the peace within their respective jurisdictions shall hear and determine all offences committed against the true intent of this act; and that all pecuniary penalties and forfeitures inflicted and made payable by this act, whereof the time for payment is not herein-before directed, shall be paid within twenty-four hours after the conviction of the offender,

Justices are empowered to hear and determine offences committed against this act.

A. D. 1761. either by his or her confession, or by the oath of one or more credible witness or witnesses; which oath every justice, within his respective jurisdiction is hereby authorised and required to administer; and that any justice or justices within his or their respective jurisdiction may issue a warrant under his hand and seal, or their hands and seals respectively, directed to any peace-officer within their respective jurisdiction, to levy the same by distress of the goods and chattels of the respective person and persons who shall be so convicted, and which shall be found within the jurisdiction of any such justice or justices; and if within five days from any such distress being taken, the money forfeited shall not be paid, together with the costs of such distress, the goods so distrained shall be appraised and sold, rendering the overplus, if any, after deducting the penalty or forfeiture, and the costs and charges of the distress and sale, to the owner or owners thereof; which charges shall be ascertained by some justice or justices of the county, city, riding, division or place in which the offender or offenders shall have been convicted; and if sufficient distress cannot at any time be found, whereby the money which shall be forfeited by an offender or offenders against this act (other than the driver of any fish-carriage as aforesaid) can be levied on his, her or their goods and chattels, then and in every such case, on proof thereof upon oath before some justice or justices within whose respective jurisdiction any such offender or offenders shall reside or be, such justice or justices shall, on the application of any prosecutor or prosecutors of any such offender or offenders, issue a warrant under the hand and seal, or hands and seals, of any such justice or justices, directed to some peace-officer or officers, to apprehend any such offender or offenders, if he, she or they can be found, and to convey and commit every such offender and offenders to the house of correc-

tion of the county, city or place where any such offender or offenders shall be found and apprehended, there to remain and be kept to hard labour for any time not exceeding two months, as any such justice or justices shall order, unless the money which shall be forfeited by such offender or offenders shall be sooner paid. A. D. 1761.

XXVII. Provided always, and it is hereby enacted, That no person shall suffer any punishment for any offence committed against this act, unless the prosecution for the same be commenced within three calendar months after such offence committed; and that where any person shall suffer imprisonment pursuant to this act, for any offence contrary thereto, in default of payment of any penalty hereby imposed, such person shall not be liable afterwards to pay such penalty. Prosecutions within three months.

XXVIII. Provided always, and be it enacted by the authority aforesaid, That if any person who shall contract for fish contrary to the intent of this act shall, before information shall be made against him for having so contracted for the same, inform against any other party who shall have entered into any such contract, and the party or parties who shall be so informed against shall afterwards, on any such information, be duly convicted of any such offence in manner herein prescribed, then and in every such case the person who shall have so informed against and prosecuted to conviction any such other person as aforesaid shall be acquitted and released from all penalty and forfeiture which the party so informing had incurred by having entered into, or been a party to, any such contract, and shall be intitled to and have one moiety of the penalty which shall be forfeited by reason of the conviction of the party informed against. Parties contracting for fish, contrary, &c giving the first information against, and convicting others, indemnified, &c.

XXIX. And be it further enacted by the authority aforesaid, That if it shall be made out by the oath of any Evidencees may be summoned, and



A. D. 1761. credible person or persons, to the satisfaction of any justice or justices of the peace, that any one, within the jurisdiction of any such justice or justices, is likely to give or offer material evidence on behalf of the prosecutor of any offender or offenders against the true intent and meaning of this act, or on behalf of the person or persons accused, and will not voluntarily appear before such justice or justices, and be examined, and give his, her or their evidence concerning the premisses, every such justice or justices is and are hereby authorised and required to issue his or their summons to convene every such witness and witnesses before any such justice or justices, at such seasonable time as in such summons shall be fixed; and if any person so summoned shall neglect or refuse to appear at the time by such summons appointed, and no just cause shall be offered for such neglect or refusal, then, after proof by oath of such summons having been duly served upon the party or parties so summoned, every such justice and justices is and are hereby authorised and required to issue his or their warrant under his hand and seal, or their hands and seals, to bring every such witness or witnesses before any such justice or justices; and, on the appearance of any such witness or witnesses before any such justice or justices, every such justice or justices is and are hereby authorised and impowered to examine, upon oath, every such witness; and if any such witness on his or her appearance, or on being brought before such justice or justices, shall refuse to be examined, on oath, concerning the premisses, without offering any just cause for such refusal, any such justice or justices, within the limits of his or their jurisdiction, may, by warrant under his hand and seal, or their hands and seals, commit any person or persons so refusing to be examined to the public prison of the county, riding, division, city, liberty or place in which the person or persons so refusing to be examined

shall be, there to remain for any time not exceeding four- A. D. 1761.  
teen days nor less than three days, as any such justice or  
justices shall direct.

XXX. And be it also enacted by the authority afore-<sup>Offenders</sup>  
said, That in case any person, against whom a warrant<sup>escaping out</sup>  
shall be issued by any justice or justices of the peace for<sup>of jurisdic-</sup>  
tion,  
any offence against this act, shall go into, reside or be  
in any other county, riding, division, city, liberty, town  
or place, out of the jurisdiction of the justice or justices  
who shall have granted any such warrant or warrants as  
aforesaid, it shall and may be lawful for any justice or<sup>the justice</sup>  
justices of the peace of the county, riding, division, city,<sup>for the</sup>  
liberty, town or place into which such offender or of-<sup>county where</sup>  
fenders against this act shall go or be, to indorse his or<sup>he shall</sup>  
their name or names on such warrant (proof being first<sup>escape to,</sup>  
made on oath of such warrant having been signed by<sup>may back</sup>  
such other justice or justices), and every warrant so in-<sup>warrant, &c.</sup>  
dorsed shall be sufficient authority to all persons to ex-  
ecute such warrant in such other county, riding, divi-  
sion, city, liberty, town or place out of the jurisdiction  
of the justice or justices who first granted such warrant ;  
and every such justice and justices respectively, as the  
case shall happen, after indorsing any such warrant as  
aforesaid, may, on the offender or offenders therein  
named being apprehended and brought before any such  
justice or justices within his or their respective jurisdic-  
tions, hear and determine the matter of the complaint  
contained in every such warrant, in the same manner as  
if such complaint had originally arose within the juris-  
diction of such justice or justices who shall have so  
backed any such warrant ; or may direct the offender or  
offenders to be carried before a justice or justices within  
whose jurisdiction the offence was committed, there to  
be dealt with according to law.

XXXI. And be it further enacted by the authority<sup>Moiety of</sup>  
aforesaid, That one moiety of all money which shall be<sup>forfeitures,</sup>  
<sup>not other-</sup>

A. D. 1761 wise appropriated, go to the prosecutor, the other to Greenwich hospital. forfeited for any offence which shall be committed against this act (and not herein otherwise appropriated) shall, when recovered, go and be paid to the person or persons who shall prosecute to conviction any such offender or offenders, and the other moiety thereof shall go and be paid to the treasurer of Greenwich hospital for the time being, for the benefit of the same hospital.

Appeal to the next quarter session. XXXII. Provided also, and be it further enacted, That it shall be lawful for any person or persons who shall think him, her or themselves aggrieved by any order or determination of any justice or justices of the peace, upon account of any offence committed, or supposed to be committed, against this act, to appeal to the general or quarter session of the peace which shall be held for the county, city, riding, division or place where any such offence shall have been committed, next after the conviction of any offender or offenders for any offence committed against this act; the person or persons so appealing first giving security in double the sum forfeited, before such justice or justices, to prosecute such appeal with effect, and to abide by the order or orders which shall be made on such appeal, and giving eight days notice in writing of his, her or their intention to appeal, to the party or parties on whose prosecution any such conviction shall be made, if there shall be so many days within the time of such conviction and such general or quarter session; and, if not, then the party or parties who shall deem him, her or themselves aggrieved by any such conviction, shall and may be at liberty to appeal to the next general or quarter session but one which shall be held next after any such conviction for the county, city or place where any such conviction shall be made; and the justices in their said general or quarter session are hereby authorised and required to hear and determine the matter of every such

appeal, and to make such order therein, and to award A. D. 1761. such costs, as to them shall appear just, and to cause to be levied, under the order of any such session, the costs which shall be awarded, together with such money as any such court of session, on the hearing of any such appeal, shall adjudge to be forfeited, by distress and sale of the goods and chattels of the person or persons who shall refuse to pay such costs and money forfeited; and if sufficient goods or chattels of any such offender or offenders cannot be met with to satisfy such costs and money forfeited, then by distress and sale of the goods and chattels of the person or persons who shall have become surety or sureties as aforesaid for the party or parties who shall have so appealed.

XXXIII. Provided likewise, and be it also enacted, That no order or proceedings to be made or had by or before any justice of the peace in relation to the premisses shall be quashed or vacated for want of form only; and that the order which shall be made in the premisses by the justices at their general or quarter session of the peace as aforesaid shall be final; and that no proceedings of any such justice or justices out of session, or in their said general or quarter session, in pursuance of this act, shall be removeable by certiorari, letters of advocation or of suspension, or otherwise.

XXXIV. And be it enacted by the authority aforesaid, That if any action or suit shall be brought or commenced against any person or persons for any thing which shall be done in pursuance of this act, every such action or suit shall be brought and commenced within the space of six calendar months next after any such cause of action shall have accrued, and not afterwards; and shall be brought, laid and tried in the county, city or place in which the cause of action shall have arisen, and not elsewhere; and that the defendant and defend-

No proceedings vacated for want of form; or removed by certiorari, &c.

Limitation of actions.



**A. D. 1761.** ants in every such action and suit may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if the same shall appear to have been so done, or if any such action or suit shall not be commenced within the time before limited, or shall be laid or brought in any other county, city or place than where the cause of action shall have arisen, then and in any of such cases the jury shall find a verdict for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs in any such action or suit shall become nonsuit, or discontinue his, her or their action, after the defendant or defendants therein shall have appeared, or if, on any demurrer, judgment shall be given for the defendant or defendants, then and in any of the said cases every such defendant or defendants shall have and recover treble costs, and shall be intitled to pursue and take such remedy for recovering the same, as any defendant or defendants hath or have to recover his or their costs in other cases by law.

**Provisions extended to the parish of Saint Mary le Bone in Middlesex.** XXXV. And be it further enacted by the authority aforesaid, That all the provisions and regulations hereinbefore contained and enacted, with respect to the place within the weekly bills of mortality, touching the sale of buying of fish, and all penalties for the non-observance thereof, shall extend, and be construed to extend, to the parish of Saint Mary le Bone in the said county of Middlesex, and shall in like manner, to all intents and purposes, take place and be in force with respect to the said parish of Saint Mary le Bone.

**Clauses against contracts, not to extend to those made with regard to salt or dried fish,** XXXVI. Provided further, and it is hereby also enacted and declared by the authority aforesaid, That nothing in this act contained shall extend, or be construed to extend, to make void any contract already made, or to prevent any contract from being made, after

the said first day of May, one thousand seven hundred and sixty-two, by or with any person or persons, in regard to salt or dried fish, oysters, carp, or tench, or any of them.

A. D. 1761.

oysters, carp, or tench.

XXXVII. Provided always, and it is hereby further enacted and declared by the authority aforesaid, That no justice or justices of the peace shall receive any information against any person or persons, by reason of being a party to or concerned in any contract for buying up fish to be sold again contrary to the intent of this act; but that all money which shall be payable or forfeited by reason of any such contract being made or entered into, shall be recoverable only, together with double costs of suit, by the person who shall inform and sue for the same in one of his majesty's courts of record at Westminster, wherein no essoin, wager of law or protection shall be allowed; and one moiety of the money so forfeited shall when recovered go and be paid to the treasurer of Greenwich hospital for the time being, for the benefit of the same hospital, and the other moiety thereof to the person or persons who shall inform for and recover the same.

No information received for being concerned in any contract, &c. but the penalty shall be recoverable only in one of the courts at Westminster, &c.

2 GEO. 3. C. 19. A. D. 1761. *Rep.*

AN ACT FOR THE BETTER PRESERVATION OF GAME IN THAT PART OF GREAT BRITAIN CALLED ENGLAND.

‘ For the better preservation of the game in this kingdom, may it please your most excellent majesty, that it may be enacted;’ and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That no person or persons, after the

No person may take, &c. any part-ridge between 12 Feb. and 1 Sept. or pheasant between 1 Feb. and

A. D. 1761. first day of June, one thousand seven hundred and sixty-  
 and 1 Oct. of  
 heath-fowl  
 between 1  
 Jan. and 20  
 Aug. or  
 grouse be-  
 tween 1 Dec.  
 and 25 July.  
 Repealed as  
 to black and  
 red game, by  
 13 Geo. 3.  
 c. 55. § 13.

two, shall, upon any pretence whatsoever, take, kill, destroy, carry, sell, buy, or have in his, her or their possession or use any partridge, between the twelfth day of February and the first day of September, in any year; or any pheasant, between the first day of February and the first day of October, in any year; or any heath-fowl, commonly called black game, between the first day of January and the twentieth day of August, in any year; or any grouse, commonly called red game, between the first day of December and the twenty-fifth of July, in any year.

II. Provided always, That nothing in this act shall extend to any pheasant which shall be taken in the season allowed by this act, and kept in any mew or breeding-place.

III. Provided also, That nothing in this act contained shall extend, or be construed to extend, to that part of Great Britain called Scotland.

Persons of-  
 fending for-  
 feit 5l. per  
 bird.

IV. And be it further enacted by the authority aforesaid, That if any person or persons shall transgress this act in any of the aforesaid cases, and shall be lawfully convicted thereof by the oath of one or more credible witness or witnesses, every such person shall, for every partridge, pheasant, heath-fowl or grouse, so taken, killed, destroyed, carried, sold, bought or found in his, her or their possession or use, contrary to the true intent and meaning of this act, forfeit and pay the sum of five pounds to the person or persons who shall inform or sue for the same: and it shall and may be lawful to and for any person or persons to sue and prosecute for and recover the said penalty of five pounds, with full costs of suit, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster; and in such action or suit, no essoin, wager of law, or more than one imparlance, shall be allowed.

' V. And whereas by an act passed in the eighth year A. D. 1761.  
 ' of the reign of his late majesty King George the First,  
 ' intituled, " an act for the better recovery of the pe-8 Geo.1. c. 19.  
 ' nalties inflicted upon persons who destroy the game ;"  
 ' it was enacted, that wheresoever any person shall,  
 ' for any offence to be hereafter committed against any  
 ' law now in being for the better preservation of the  
 ' game, be liable or subject to any pecuniary penalty or  
 ' sum of money, upon conviction before any justice or  
 ' justices of the peace, it shall and may be lawful for  
 ' any other person whatsoever either to proceed to re-  
 ' cover the said penalty, by information and convic-  
 ' tion, before a justice or justices of the peace, in such  
 ' manner as in such law contained, or to sue for the  
 ' same by action of debt, or on the case, bill, plaint, or  
 ' information, in any of his majesty's courts of record :  
 ' and whereas a moiety or portion of the said pecuniary  
 ' penalty is, by several acts of parliament, directed to  
 ' be applied to and for the use of the poor of the pa-  
 ' rish wherein such offence shall be committed, by rea-  
 ' son whereof inhabitants of the said parish have been  
 ' disallowed to give evidence touching such offences :  
 ' and whereas suits by action of debt, or on the case,  
 ' bill, plaint, or information, are often attended with  
 ' great costs and charges to the prosecutor, by means  
 ' whereof the end or intentions of the said act have been  
 ' in a great measure frustrated ; for remedy whereof,  
 ' be it enacted by the authority aforesaid, That from and <sup>Pecuniary</sup>  
 ' after the passing of this act it shall and may be lawful <sup>penalties un-</sup>  
 ' for any person whatsoever to sue for and recover the <sup>der the sa d</sup>  
 ' whole of such penalty for his own use, by action of debt, <sup>act may be</sup>  
 ' or on the case, bill, plaint, or information, in any of his <sup>sued for to</sup>  
 ' majesty's courts of record at Westminster, wherein no <sup>sole use of</sup>  
 ' no essoin, wager of law, or more than one imparlance, <sup>prosecutor,</sup>  
 ' shall be allowed ; and wherein the plaintiff, if he reco- <sup>&c.</sup>  
 ' vers, shall have his double costs ; and that no part of



A. D. 1761. the said penalty, recovered in any such suit or action, shall be paid or applied to or for the use of the poor of the parish wherein such offence shall be committed ; any law or usage to the contrary notwithstanding.

Prosecution  
within six  
months.

VI. Provided always, and be it enacted, That no such action, suit, bill, plaint, or information, shall be brought or exhibited but within the space of six months next after the matter or thing done, for which the same shall be commenced or exhibited as aforesaid.

2 GEO. 3. C. 29. A. D. 1761.

AN ACT TO AMEND SO MUCH OF AN ACT MADE IN THE FIRST YEAR OF THE REIGN OF KING JAMES THE FIRST, INTITULED, ‘ AN ACT FOR THE BETTER EXECUTION OF THE INTENT AND MEANING OF FORMER STATUTES MADE AGAINST SHOOTING IN GUNS, AND FOR THE PRESERVATION OF THE GAME OF PHEASANTS AND PARTRIDGES, AND AGAINST THE DESTROYING OF HARES WITH HARE-PIPES, AND TRACING HARES IN THE SNOW ;’ AS RELATES TO THE PRESERVATION OF HOUSE-DOVES AND PIGEONS, BY MAKING THE MANNER OF CONVICTING SUCH PERSON OR PERSONS AS SHALL OFFEND THEREIN MORE EASY AND EXPEDITIOUS.

1 Jac. 1. c. 27. ‘ Whereas by an act made in the first year of the  
‘ reign of his majesty King James the First, intituled,  
‘ an act for the better execution of the intent and mean-  
‘ ing of former statutes made against shooting in  
‘ guns, and for the preservation of the game of pheas-  
‘ ants and partridges, and against the destroying of  
‘ hares with hare-pipes, and tracing hares in the snow,”  
‘ it is amongst other things therein enacted, that all and  
‘ every person and persons who shall kill or destroy any

house-dove or pigeon, and shall be thereof convicted A.D. 1761.  
by the confession of the party, or by the testimony of  
two sufficient witnesses upon oath, before two or more  
justices of the peace, of the county, city, or town cor-  
porate, wherein the offence shall be committed, or the  
parties apprehended, such justices shall commit every  
such offender so apprehended, to the common gaol of  
the said county, city, or town corporate, where the of-  
fence shall be committed, or the party apprehended,  
there to remain for three months without bail or main-  
prize, unless that the said offender do or shall forth-  
with upon the said conviction pay, or cause to be  
paid, to the churchwardens of the said parish where  
the said offence shall be committed, or the party ap-  
prehended, to the use of the poor of the said parish,  
the sum of twenty shillings for every house-dove or  
pigeon which every such person or persons, so offend-  
ing and convicted as aforesaid, shall take, kill, or wil-  
lingly destroy, contrary to the true purport and mean-  
ing of that act ; or after one month after his commit-  
ment, together with two sufficient sureties, become  
bound by recognizance in the sum of twenty pounds  
a-piece, to the king's majesty's use, his heirs and suc-  
cessors, with condition that he the said party so of-  
fending shall not at any time thereafter shoot at, kill,  
take or destroy, any house-dove or pigeon, by any  
such means as in the said act are mentioned ; which  
said recognizance shall be taken by any two or more  
justices of the peace, of the said county, city, or town-  
corporate, where the offender shall be so imprisoned as  
aforesaid, and shall be returned to the then next quar-  
ter sessions, and there to remain of record as other re-  
cognizances taken for the peace, as by the said in part  
recited act, relation for greater certainty being there-  
unto had, may more fully appear : and whereas the  
method of convicting offenders against the above-re-

A. D. 1761. ' cited act hath hitherto been found in a great degree  
 ' intellectual to answer the good intentions of the said  
 ' act; therefore, for more speedy convicting and pu-  
 ' nishing persons who shall be guilty of the said mis-  
 ' chievous practice of wilfully killing or destroying  
 ' house-doves or pigeons belonging to other persons, may  
 ' it please your majesty, that it may be enacted; and  
 be it enacted by the king's most excellent majesty, by  
 and with the advice and consent of the lords spiritual  
 and temporal, and commons, in this present parliament  
 assembled, and by the authority of the same, That after  
 the twenty-fourth day of June, one thousand seven hun-  
 dred and sixty-two, if any person or persons shall shoot  
 at, with an intent to kill, or shall, by any means what-  
 ever, kill or take, with a wilful intent to destroy, any  
 house-dove or pigeon, and shall be thereof convicted by  
 the confession of the party offending, or the oath of one  
 or more credible witness or witnesses, before one or more  
 justice or justices of the peace of the county, city, town  
 corporate, division, riding or place (which oath such jus-  
 tice or justices are hereby authorized to administer) where-  
 in any such offence or offences shall be committed, or the  
 party or parties offending shall be apprehended, every  
 person so offending, and who shall be convicted as afore-  
 said of any such offence, shall, for every such offence,  
 forfeit and pay the sum of twenty shillings to the per-  
 son or persons who shall inform against, and prosecute to  
 conviction, any such offender or offenders; and in case  
 the money so forfeited shall not be forthwith paid on  
 every such conviction, it shall and may be lawful for  
 such justice or justices to commit any such offender  
 or offenders, who shall be so convicted as aforesaid, to  
 the common gaol of the county, or the house of correc-  
 tion in the division or place where the party is convicted  
 or apprehended, there to remain and be kept to hard la-  
 bour for any time not exceeding three calendar month

Any person  
 who shall  
 wilfully  
 shoot at, or  
 destroy any  
 house-doves  
 or pigeons  
 belonging to  
 other per-  
 sons, shall  
 forfeit on con-  
 viction, 20s.  
 to the prose-  
 cutor, &c.

nor less than one calendar month, as any such justice or A. D. 1761.  
 justices shall order, unless the money forfeited shall be  
 sooner paid.

II. Provided always, and it is hereby also enacted, <sup>Owners of</sup>  
 That nothing in this act contained shall be construed, <sup>dove-cotes,</sup>  
 deemed or taken to hinder any owner of a dove-cote, <sup>&c, excepted.</sup>  
 pigeon-house, pigeon-chamber or any other place built  
 up or erected, or to be built up or erected, for the pre-  
 servation or breeding of pigeons, from taking, killing  
 or destroying, by himself, or any other person by him  
 appointed or authorized for that purpose, all or any  
 house-doves or pigeons which shall at any time be  
 taken in the proper dove-cote, pigeon-house, pigeon-  
 chamber, or any other place, as aforesaid, for the pre-  
 servation or breeding of pigeons, of any owner of such  
 dove-cote, pigeon-house, pigeon-chamber or other place.

III. Provided further, and it is hereby also enacted,  
 That no person who shall be convicted of any offence  
 against this act, shall be liable to be convicted for any  
 such offence, under any former or other act; and that  
 no person shall be prosecuted for any offence against this  
 act, unless the prosecution for the same shall be com-  
 menced and carried on with effect within the space of  
 two calendar months after every such offence shall be  
 committed; and that where any person shall suffer im-  
 prisonment for default of payment of any penalty im-  
 posed under this act, such person shall not be liable af-  
 terwards to pay such penalty.



A. D. 1765.

5 GEO. 3. C. 14. A. D. 1765.

AN ACT FOR THE MORE EFFECTUAL PRESERVATION OF  
FISH IN FISH-PONDS AND OTHER WATERS; AND  
CONIES IN WARRENS; AND FOR PREVENTING THE  
DAMAGE DONE TO SEA-BANKS, WITHIN THE COUNTY  
OF LINCOLN, BY THE BREEDING CONIES THEREIN.

‘Whereas the several laws in being for the preservation of the fish in rivers, ponds, pools, moats, stews and other waters, are by experience found to be ineffectual to deter divers loose, idle, and disorderly persons, from stealing, taking away, or destroying, the fish therein bred and preserved;’ may it therefore please your most excellent majesty, that it may be enacted; and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same,

Persons convicted of stealing or destroying fish, &c. are to be transported for seven years.

‘That in case any person or persons from and after the first day of June, one thousand seven hundred and sixty-five, shall enter into any park or paddock fenced in and inclosed, or into any garden, orchard, or yard, adjoining or belonging to any dwelling-house, in or through which park or paddock, garden, orchard, or yard, any river or stream of water shall run or be, or wherein shall be any river, stream, pond, pool, moat, stew, or other water, and by any ways, means, or device whatsoever, shall steal, take, kill, or destroy, any fish bred, kept or preserved, in any such river or stream, pond, pool, moat, stew, or other water aforesaid, without the consent of the owner or owners thereof; or shall be aiding or assisting in the stealing, taking, killing, or destroying, any such fish as aforesaid; or shall receive

or buy any such fish knowing the same to be so stolen or taken as aforesaid; and being thereof indicted within six calendar months next after such offence or offences shall have been committed, before any judge or justices of gaol delivery for the county wherein such park or paddock, garden, orchard or yard, shall be, and shall on such indictment be, by verdict, or his or their own confession or confessions, convicted of any such offence or offences as aforesaid; the person or persons so convicted shall be transported for seven years. A. D. 1765.

‘ II. And, for the more easy and speedy apprehending and convicting of such person or persons as shall be guilty of any of the offences before-mentioned,’ be it further enacted by the authority aforesaid, That in case any person or persons shall, at any time after the said first day of June, commit or be guilty of any such offence or offences as are herein-before mentioned, and shall surrender himself to any one of his majesty’s justices of the peace in and for the county where such offence or offences shall have been committed; or, being apprehended and taken, or in custody for such offence or offences, or on any other account, and shall voluntarily make a full confession thereof, and a true discovery, upon oath, of the person or persons who was or were his accomplice or accomplices in any of the said offences, so as such accomplice or accomplices may be apprehended and taken, and shall, on the trial of such accomplice or accomplices, give such evidence of such offence or offences, as shall be sufficient to convict such accomplice or accomplices thereof, such person making such confession and discovery, and giving such evidence as aforesaid, shall, by virtue of this act, be pardoned, acquitted, and discharged, of and from the offence or offences so by him confessed as aforesaid. Any offender convicting his accomplices intitled to pardon.

III. And be it further enacted by the authority

A. D. 1765. aforesaid, That in case any person or persons shall, after the said first day of June, take, kill or destroy, or attempt to take, kill or destroy, any fish in any river or stream, pond, pool or other water (not being in any park or paddock, or in any garden, orchard or yard, adjoining or belonging to any dwelling-house, but shall be in any other inclosed ground which shall be private property) every such person, being lawfully convicted thereof by the oath of one or more credible witness or witnesses, shall forfeit and pay, for every such offence, the sum of five pounds, to the owner or owners of the fishery of such river or stream of water, or of such pond, pool, moat or other water ; and it shall and may be lawful to and for any one or more of his majesty's justices of the peace of the county, division, riding or place where such last-mentioned offence or offences shall be committed, upon complaint made to him or them upon oath against any person or persons, for any such last-mentioned offence or offences, to issue his or their warrant or warrants to bring the person or persons so complained of before him or them ; and, if the person or persons so complained of shall be convicted of any of the said offences last mentioned, before such justice or justices, or any other of his majesty's justices of the same county, division, riding or place aforesaid, by the oath or oaths of one or more credible witness or witnesses, which oath such justice or justices are hereby authorized to administer, or by his or their own confession, then and in such case the party so convicted shall, immediately after such conviction, pay the said penalty of five pounds, hereby before imposed for the offence or offences aforesaid, to such justice or justices before whom he shall be so convicted, for the use of such person or persons as the same is hereby appointed to be forfeited and paid unto ; and, in default thereof, shall be committed by such justice or

forfeit to the owner of the fishery &c.

See *Doughl.*

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justices to the house of correction, for any time not exceeding six months, unless the money forfeited shall be sooner paid. A. D. 1765.

IV. Provided nevertheless, That it shall and may be lawful to and for such owner or owners of the fishery of such river or stream of water, or of such pond, pool or other water, wherein any such offence or offences last mentioned shall be committed as aforesaid, to sue and prosecute for, and to recover the said sum of five pounds, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster; and in such action or suit, no essoin, wager of law, or more than one imparlance, shall be allowed; provided that such action or suit be brought, or commenced, within six calendar months next after such offence or offences shall have been committed.

V. Provided always, and be it further enacted by the authority aforesaid, That nothing in this act shall extend, or be construed to extend, to subject or make liable any person or persons to the penalties of this act, who shall fish, take, or kill and carry away, any fish, in any river or stream of water, pond, pool or other water, wherein such person or persons shall have a just right or claim to take, kill or carry away any such fish.

VI. And whereas there are many thousand acres of land in this kingdom altogether unfit for cultivation, and yet the same are capable of rendering great profit, by the breeding and maintaining conies, as well to the owners of such lands as to a multitude of industrious manufacturers who gain their livelihood by working up coney-wool: and whereas a great part of the said land is already used as warrens, in the breeding and maintaining conies, but, because divers disorderly persons, neglecting their own lawful trades, have betaken themselves to the taking, killing and stealing of conies in the night-time, whereby the owners and oc-



A. D. 1705. ‘ occupiers of such warrens are greatly discouraged, and  
 ‘ many such owners and occupiers have been induced  
 ‘ to destroy such warrens, and others have been de-  
 ‘ terred from stocking other lands, to the great prejudice  
 ‘ of the manufactures of this kingdom : and whereas  
 ‘ the provisions already subsisting, have, by experience,  
 ‘ been found insufficient for the effectual preservation of  
 ‘ conies in warrens :’ for remedy thereof, be it further

Persons con-  
 victed of en-  
 tering war-  
 rens in the  
 night-time,  
 and taking  
 or killing co-  
 nies there,  
 may be pu-  
 nished by  
 transporta-  
 tion, &c.

enacted, That if any person or persons shall, from and  
 after the first day of June, one thousand seven hundred  
 and sixty-five, wilfully and wrongfully, in the night-  
 time, enter into any warren or grounds lawfully used or  
 kept for the breeding or keeping of conies, although the  
 same be not inclosed, and shall then and there wilfully  
 and wrongfully take or kill, in the night-time, any co-  
 ney or conies, against the will of the owner or occupier  
 thereof, or shall be aiding and assisting therein, and  
 shall be convicted of the same before any of his ma-  
 jesty’s justices of oyer and terminer, or general gaol de-  
 livery, for the county where such offence or offences  
 shall be committed ; every such person and persons so  
 offending, and being thereof lawfully convicted in man-  
 ner aforesaid, shall and may be transported for the space  
 of seven years, or suffer such other lesser punishment by  
 whipping, fine, or imprisonment, as the court before  
 whom such person or persons shall be tried, shall, in  
 their discretion, award and direct.

VII. Provided always, and be it enacted, That no  
 person who shall be convicted of any offence against this  
 act, shall be liable to be convicted for any such offence  
 under any former act or acts, law or laws, now in  
 force.

‘ VIII. And whereas great mischief and damage has  
 ‘ been, and still may be, occasioned by the increase of  
 ‘ conies upon the sea and river banks in the county of  
 ‘ Lincoln, or upon the land or ground within a certain

‘ distance from the said banks :’ for remedy thereof, be A. D. 1765.  
 it enacted by the authority aforesaid, That nothing in <sup>Act not to</sup>  
 this act contained shall extend, or be construed to ex- <sup>extend to de-</sup>  
 tend, to prevent any person or persons from killing and <sup>stroying co-</sup>  
 destroying, or from taking and carrying away, in the <sup>nies in the</sup>  
 day-time, any conies that shall be found on any sea or <sup>day-time, in</sup>  
 river banks, erected or to be erected for the preservation <sup>Lincoln, &c.</sup>  
 of the adjoining lands from being overflowed by the sea  
 or river waters, so far as the flux and reflux of the tide  
 does or shall extend, or upon any land or ground within  
 one furlong distance of such sea or river banks, so far as  
 the flux and reflux of the tide does or shall extend, or  
 upon any land or ground within one furlong distance of  
 such sea or river banks ; but that it shall and may be  
 lawful to and for any person or persons to enter upon  
 any such banks, land or ground, as aforesaid, within the  
 said county of Lincoln, and to kill, destroy, take and  
 carry away, in the day-time, to his or their own use,  
 any conies so found upon any such banks, land or ground  
 as aforesaid, within the said county, he or they doing as  
 little damage as may be to the owner or tenant of such  
 banks, land or ground ; any thing in this or any other  
 act contained to the contrary notwithstanding.

IX. Provided also, That no person or persons shall  
 be obliged to make satisfaction for any damages that  
 may be occasioned by such entry, unless such damages  
 shall exceed the sum of one shilling.

10 GEO. 3. C. 18. A. D. 1770.

A. D. 1770.

AN ACT FOR PREVENTING THE STEALING OF DOGS.

‘ Whereas the practice of stealing dogs hath of late  
 ‘ years greatly increased : for remedy whereof, may it  
 ‘ please your majesty, that it may be enacted ;’ and be it

A. D. 1770. enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of May, one thousand seven hundred and seventy, if any person shall steal any dog or dogs, of any kind or sort whatsoever, from the owner or owners thereof, or from any person or persons intrusted by the owner or owners thereof with such dog or dogs; or shall sell, buy, receive, harbour, detain or keep any dog or dogs of any kind or sort whatsoever, knowing the same to have been stolen as aforesaid, every such person, upon being convicted thereof upon the oath of one or more credible witness or witnesses, or by his or her own confession, before any two or more justices of the peace for any county, riding, division or place, shall, for the

First offence to forfeit not less than 20l. &c.

first offence, forfeit and pay such sum of money, not exceeding thirty pounds nor less than twenty pounds, as to such justices shall seem meet, together with the charges previous to and attending such conviction, to be ascertained by such justice before whom such offender shall be convicted: and in case such penalty shall not be forthwith paid, such justices shall commit the offender to the common gaol or house of correction, there to remain without bail or mainprize for any time not exceeding twelve calendar months nor less than six calendar months, or until the penalty and charges shall be paid: and if any person, having been convicted as aforesaid, shall afterwards be guilty of the like offence, and shall be thereof convicted in like manner as aforesaid; every such person shall, for every such offence, forfeit and pay such sum of money, not exceeding fifty pounds nor less than thirty pounds, as to such justices shall seem meet, together with the charges previous to and attending such conviction, to be ascertained by such justices before whom such offender or offenders shall be

Subsequent offence to forfeit not less than 30l. &c.

so convicted ; which said penalties, or any of them, when A. D. 1770. recovered, shall be paid, one moiety thereof to the informer, and the other moiety to the poor of the parish where the offence shall be committed ; and, upon non-payment thereof, such justices shall commit the offender to the common gaol or house of correction, there to remain without bail or mainprize, for any time not exceeding eighteen months, nor less than twelve months, or until the penalty and charges shall be paid : and such justices shall also order the said offender to be publicly whipped, within three days after such commitment, in the town wherein such gaol or house of correction shall be, between the hours of twelve and one of the clock.

II. And be it further enacted by the authority afore-Justices to  
said, That it shall and may be lawful to and for any one <sup>grant war-</sup>  
or more of his majesty's justices of the peace in or for <sup>rants, &c.</sup>  
any county, riding, division or place, upon information to him or them made for that purpose, to grant a warrant or warrants to search for any dog or dogs stolen as aforesaid, and in case any such dog or dogs, or the skin or skins of such dog or dogs, shall upon such search be found, to take and restore every such dog or dogs, or such skin or skins, to the owner thereof ; and the person or persons in whose custody or possession any such dog or dogs, skin or skins, shall be so found (in case it shall appear that such person was privy to such dog or dogs having been stolen as aforesaid, or that such skin or skins was the skin or skins of any dogs or dogs stolen as aforesaid) shall respectively be subject and liable to the like penalties and punishments as persons convicted of stealing any dog or dogs, are herein-before made subject and liable to.

III. And for the more easy and speedy conviction of Justices may  
offenders against this act, be it further enacted, That <sup>cause to be</sup>  
all justices of the peace, before whom any person or per- <sup>drawn up the</sup>  
<sup>following</sup>



A. D. 1770. sons shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall happen; *videlicet,*

Term of con-  
viction. BE it remembered, that on the  
‘ day of in the year of our Lord  
‘ *A. B.* is convicted before us  
‘ of his majesty’s justices of the  
‘ peace for the county of [spe-  
‘ cifying the offence, and the time and place when and  
‘ where the same was committed, as the case shall be.]

‘ Given under our hands and seals, the day and  
‘ year aforesaid.’

Appeal. IV. Provided always, and be it further enacted,  
That if any person shall think himself or herself ag-  
grieved by any thing done in pursuance of this act, such  
person may appeal to the justices of the peace at the  
next general quarter session of the peace to be held for  
the county or place wherein the cause of complaint shall  
arise, and within four days after the cause of such com-  
plaint shall have arisen; such appellant giving, or caus-  
ing to be given, fourteen days notice at least, in writing,  
of his or her intention to bring such appeal, and of the  
matter thereof, to the persons whose acts are complained  
against; and, within two days after such notice, enter-  
ing into a recognizance before some justice of the peace  
for such county or place, with two sufficient sureties,  
conditioned to try such appeal, and abide the order of,  
and to pay such costs as shall be awarded by, the justices  
at such quarter sessions; and the said justices at such  
session, upon due proof of such notice being given as  
aforesaid, and of the entering into such recognizance,

shall hear and finally determine the causes and matters A. D. 1770.  
of such appeal in a summary way, and award such costs  
to the parties appealing, or appealed against, as they  
the said justices shall think proper ; and the determina-  
tion of such quarter sessions shall be final, binding and  
conclusive, to all intents and purposes ; and no order  
made concerning any of the matters aforesaid, or any  
other proceeding to be had, touching the conviction or  
convictions of any offender against this act, shall be  
quashed for want of form, or be removed by certiorari,  
or any other writ or process whatsoever, into any of his  
majesty's courts of record at Westminster.

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11 GEORGE 3. C. 27. A. D. 1771.

A. D. 1771.

AN ACT FOR REGULATING AND IMPROVING THE  
FISHERIES IN THE RIVER TWEED, AND THE RIVERS  
AND STREAMS RUNNING INTO THE SAME ; AND  
ALSO WITHIN THE MOUTH OR ENTRANCE OF THE  
SAID RIVER.

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CAP. 31.

AN ACT FOR THE ENCOURAGEMENT OF THE WHITE  
HERRING FISHERY.

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CAP. 38.

AN ACT FOR THE BETTER SUPPORT AND ESTABLISH-  
MENT OF THE GREENLAND AND WHALE FISHERY.

A. D. 1772.

12 GEO. 3. c. 58. A. D. 1772.

AN ACT FOR THE FURTHER ENCOURAGEMENT OF THE  
HERRING-FISHERY ON THE COASTS OF THE ISLE  
OF MAN; AND FOR OBVIATING A DOUBT WHICH  
HAS ARISEN WITH RESPECT TO THE ALLOWING  
THE BOUNTIES UPON THE BRITISH WHITE HER-  
RING FISHERY, IN THE YEAR ONE THOUSAND  
SEVEN HUNDRED AND SEVENTY-ONE.

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A. D. 1773.

13 GEO. 3. c. 54. A. D. 1773.

AN ACT FOR THE MORE EFFECTUAL PRESERVATION  
OF THE GAME IN THAT PART OF GREAT BRITAIN  
CALLED SCOTLAND; AND FOR REPEALING AND  
AMENDING SEVERAL OF THE LAWS NOW IN BEING  
RELATIVE THERETO.

Persons tak-  
ing, &c.  
muir-fowl,  
&c. between  
Dec. 10. and  
Aug. 12. &c.  
shall forfeit  
for every  
bird so de-  
stroyed 5l.

‘Whereas the laws already made for the preservation  
‘of game in that part of Great Britain called Scotland  
‘are found by experience to be insufficient for that pur-  
‘pose, without being altered and amended;’ may it  
therefore please your majesty, that it may be enacted, and  
be it enacted by the king’s most excellent majesty, by  
and with the advice and consent of the lords spiritual  
and temporal, and commons, in this present parliament  
assembled, and by the authority of the same, That every  
person who shall wilfully take, kill, destroy, carry, sell,  
buy, or have in his or her possession, or use any muir-  
fowl or tarmargan, between the tenth day of December,  
and the twelfth day of August, in any year; or any  
heath-fowl, between the tenth day of December, and the  
twentieth day of August, in any year; or any par-  
tridge, between the first day of February, and the first

day of September, in any year; or any pheasant, between the first day of February, and the first day of October, in any year; shall for every bird so taken, killed, destroyed, carried, sold, bought, found, or used, forfeit and pay the sum of five pounds sterling; and in case of not paying the sum decreed within the space of ten days after conviction by a final sentence, shall suffer imprisonment for two months for each five pounds sterling thereof.

II. Provided always, That nothing in this act shall extend to any pheasant or partridge which shall be taken in the seasons allowed by this act, and kept in any mew or breeding-place.

III. And be it further enacted by the authority <sup>Having game</sup> aforesaid, That every person whatsoever, not qualified <sup>in custody,</sup> to kill game in Scotland, who shall have in his or her <sup>without leave</sup> custody, or carry, at any time of the year, upon any <sup>of persons</sup> pretence whatsoever, any hares, partridges, pheasants, muir-fowl, tarmargans, heath-fowl, snipes, or quails, without the leave or order of a person qualified to kill game in Scotland, for carrying such hares or other game, or for having the same in his or her custody, shall, for the first offence, forfeit and pay the sum of twenty shillings sterling; and for the second, and every other subsequent offence, the sum of forty shillings sterling; and in case of not paying the sum decreed within the space of ten days after conviction by a final judgment, shall suffer imprisonment for six weeks for the first offence, and for three months for the second, and every other subsequent offence.

IV. And be it further enacted by the authority aforesaid, That every person who shall make muirburn, or set fire to any heath or muir, in that part of Great Britain called Scotland, from the eleventh day of April to the first day of November in any year, shall forfeit and pay the sum of forty shillings sterling for the first of- <sup>Penalties for</sup> <sup>first and sub-</sup> <sup>sequent of-</sup> <sup>fences, &c.</sup>



A. D. 1773. fence, five pounds sterling for the second offence, and ten pounds sterling for the third and every other subsequent offence; and in case of not paying the sum decreed within the space of ten days after conviction by a final judgment, shall suffer imprisonment for six weeks for the first offence, two months for the second, and three months for the third and every other subsequent offence.

Occupiers of  
the ground  
liable,  
unless, &c.

V. And be it further enacted by the authority aforesaid, That the tenant, possessor, or occupier of the ground upon which such muirburn shall be made or discovered within the forbidden time aforesaid, shall be deemed and taken to be guilty of the offence, and shall be liable to the several penalties aforesaid, unless such tenant, possessor, or occupier, shall prove, to the satisfaction of the court before which he or she shall be prosecuted, that such fire was communicated from some neighbouring ground, or was raised upon his or her ground by some other person not in his or her service or family.

VI. Provided always, and be it enacted by the authority aforesaid, That every proprietor of high and wet muir lands, the heath upon which frequently cannot be burnt so early as the eleventh day of April, may, when such lands are in his own occupation, burn the heath upon the same, at any time between the eleventh and twenty-fifth day of April in any year, without incurring any of the penalties before-mentioned; and when such lands are let, the proprietor, or his commissioner or factor, may, by a writing under his or their hands, authorise his tenant or tenants in such lands to burn the heath thereon, at any time between the eleventh and twenty-fifth day of April, in any year, without incurring any of the penalties before-mentioned.

VII. Provided also, That the writing authorising such burning, when the lands are in the occupation of a

tenant, shall, previous to such burning, be recorded in A. D. 1778. the sheriff or stewart court books of the county or stewartry within which the lands are, and which the sheriff or stewart clerk of such county or stewartry is hereby ordered and directed to do, upon receiving payment of the fees usually paid for recording writings.

VIII. And be it further enacted by the authority <sup>Offences</sup> aforesaid, That all offences against this act shall and <sup>may be de-</sup> may be enquired into and determined, either by the oath <sup>termined,</sup> &c. or oaths of one or more credible witness or witnesses, or by the confession or oaths of the parties accused, before any two or more of his majesty's justices of the peace, or before the sheriff, or stewart-depute, or substitute, of the county where the offence shall be committed, or where the offender shall be found; and that all prosecutions for offences against this act shall be carried on, either at the instance of the fiscal of the court in which the prosecution is brought, or of any other person who will inform or complain.

IX. And be it further enacted by the authority aforesaid, That if any person convicted of any of the offences <sup>Persons con-</sup> against this act shall not pay the penalty or forfeiture <sup>victed to pay</sup> decreed against him or her within the space of ten days <sup>within ten</sup> from and after a final judgment of conviction, it shall and may be lawful for the justices of the peace, sheriff, or stewart-depute, or substitute, before whom the information, complaint or action may have been brought, upon the application of the prosecutor, to grant warrant for levying the penalties or forfeitures by immediate distress and sale of the offender's goods and moveables, together with the costs and charges attending the levying thereof, returning the overplus, if any be, to the owner; or to grant warrant for committing the offender to the common gaol of the county, for the time specified in this act, as satisfaction for the penalty or forfeiture incurred, or until payment; and in case a warrant

A. D. 1773. for levying the penalty by distress and sale of the offender's goods and moveables shall be first applied for and obtained, and that the penalty or forfeiture shall not be recovered in consequence thereof, it shall and may be lawful for the justices of peace, sheriff, or steward-depute, or substitute, who granted the warrant for levying the penalty or forfeiture by distress and sale of the offender's goods and moveables, upon its being certified to him or them by the officer employed in executing the warrant, either that he has been able to recover no part of the penalty or forfeiture, or that a certain part, to be certified by him, still remains unrecovered, to grant warrant for committing the offender to the common gaol of the county for the time specified in this act, as satisfaction for the penalty or forfeiture incurred, or until complete payment shall be made of the penalty or forfeiture incurred and decreed.

Penalties and  
forfeitures.

X. And be it further enacted by the authority aforesaid, That one moiety of the penalties or forfeitures to be incurred for any offence against this act, shall, when recovered, be paid to the prosecutor, and the other moiety shall be applied to the use of the poor of the parish, or to the repairing of the high roads within the parish where the offence shall be committed, as the justices of the peace, or the sheriff or steward-depute, or substitute, shall direct, before whom the offender shall be convicted.

Appeal.

XI. Provided always, and be it enacted by the authority aforesaid, That it shall and may be lawful to or for any person conceiving himself or herself aggrieved by any decree of the justices of the peace, or sheriff, or steward-depute, or substitute, in such prosecutions, to complain and seek relief by appeal to the next circuit court of justiciary of the circuit wherein the county is where the decree is pronounced; or where there are no circuit courts, to the court of justiciary at Edinburgh,



by taking and entering an appeal in open court, at the A. D. 1773. time of pronouncing such decree, or at any time thereafter within ten days, by lodging the same in the hands of the clerk of the court, and serving the adverse party with a duplicate thereof personally, or at his dwelling-house, or his procurator or agent in the cause; and such service shall be sufficient summons to oblige the prosecutor to attend and answer at the next circuit court which shall happen to be held, at least fifteen days after service, or at the first court of justiciary which shall be held at Edinburgh, in the case where there are no circuit courts, at least fifteen days after such service; and thereupon the judge or judges at such circuit court, or in the court of justiciary at Edinburgh, shall and may proceed to cognosce, hear, and determine; and in case they shall find the reasons of any such appeal not relevant, or not instructed, or shall determine against the party appealing, the judge or judges shall condemn the appellant in such costs of suit as shall appear to be just and reasonable, and the decree so pronounced shall be final and conclusive to the parties.

XII. Provided also, and be it enacted by the authority aforesaid, That when an appeal is taken, the appellant, at the time of entering his or her appeal, shall lodge with the clerk of the court from which the appeal is taken, a bond, with a sufficient cautioner, for paying the sum or sums contained in the decree appealed against, so far as affirmed and approved of by the judgment upon the appeal, and for paying the costs of suit, if any shall be awarded; and the clerk of court shall be answerable for the sufficiency of such cautioner.

XIII. Provided likewise, and be it enacted by the authority aforesaid, That in case any circuit court shall, on hearing any such appeal, find any such difficulty to arise, that by means thereof such circuit court cannot proceed to the determination of the same, consistently



A. D. 1773. with justice and the nature of the case : in any such case, and not otherwise, it shall and may be lawful to and for such circuit court to certify such appeal, together with the reasons of such difficulty, and the proceedings thereupon had before such circuit court, to the court of judicary at Edinburgh, which is hereby authorised and required to proceed in and determine the same.

XIV. Provided always, That no penalty or forfeiture in this act shall be recovered, unless the prosecution for recovering thereof shall be commenced within six months after the offence committed.

XV. Provided also, That no person shall be liable to any of the penalties or forfeitures hereby enacted, except for such offence as shall be committed after the twenty-fourth day of June one thousand seven hundred and seventy-three.

21 Geo. 2. XVI. And be it further enacted by the authority aforesaid, That from and after the passing of this present act, an act passed in the twenty-fourth year of his late majesty King George the Second, intituled, “an act for the better preservation of the game in that part of Great Britain called Scotland ;” and an act, passed the 3 Geo. 3. third year of his present majesty, intituled, “an act for the better preservation of the game in that part of Great Britain called Scotland ; and for repealing part of an act, passed in the twenty-fourth year of his late majesty, for the better preservation of the game in that part of Great Britain called Scotland ;” and so much of an act, passed in the sixth year of his present majesty, intituled, and 6 Geo. 3. repealed. “an act to extend an act, made in the fourth year of the reign of King George the First,” intituled, ‘an act for the further preventing robbery, burglary, and other felonies ; and for the more effectual transportation of felons, and unlawful exporters of wool ; and for declaring the law, upon some points, relative to pirates, to that part of Great Britain called Scotland, so far as the

act relates to the more effectual transportation of felons; A. D. 1773.  
 and for amending and rendering more effectual the laws  
 for restraining muirburn in forbidden time, in that part  
 of the united kingdom as limits the time for making  
 muirburn;’ shall be, and are hereby declared to be re-  
 pealed.

13 GEORGE 3. C. 55. A. D. 1773.

AN ACT TO EXPLAIN AND AMEND THE SEVERAL  
 LAWS NOW IN BEING, SO FAR AS THE SAME RE-  
 LATE TO THE PRESERVATION OF THE MOOR OR  
 HILL GAME.

‘ Whereas the laws now in being, relative to the pre-  
 ‘ servation of the moor or hill game, have been found  
 ‘ very insufficient to answer the purpose for which they  
 ‘ were intended: and whereas some further regulations  
 ‘ are become absolutely necessary to prevent the total  
 ‘ destruction of that species of game:’ may it please  
 your majesty that it may be enacted; and be it enacted  
 by the king’s most excellent majesty, by and with the  
 advice and consent of the lords spiritual and temporal,  
 and commons, in this present parliament assembled, and  
 by the authority of the same, That, from and after the  
 twenty-fourth day of June, one thousand seven hundred  
 and seventy-three, no person or persons shall, upon any  
 pretence whatsoever, wilfully take, kill, destroy, carry,  
 sell, buy, or have, in his, her, or their possession or use,  
 any heath-fowl, commonly called black-game, between  
 the tenth day of December and the twentieth day of Au-  
 gust, in any year; nor any grouse, commonly called  
 red-game, between the tenth day of December and the  
 twelfth day of August, in any year; nor any bustard,

No person to  
 kill black-  
 game, be-  
 tween, &c.

A. D. 1773. between the first day of March and the first day of September, in any year.

Penalty.

II. And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of June, if any person or persons shall, in any of the cases aforesaid, offend, contrary to the true intent and meaning of this act, every such person shall, upon due conviction, for the first offence, forfeit and pay any sum or sums of money not exceeding twenty pounds, nor less than ten pounds; and for the second and every subsequent offence, any sum or sums of money not exceeding thirty pounds, nor less than twenty pounds; to be levied and recovered in manner as herein is after mentioned.

Forfeitures  
and penalties.

III. And be it further enacted, That all such forfeitures and penalties, so to be incurred as aforesaid, shall and may be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, or great sessions in Wales, wherein no essoin, protection, nor wager of law, nor more than one imparlance shall be allowed: provided such action be brought within six calendar months after the matter or thing done, for which the same shall be commenced or exhibited.

Information.

IV. And be it further enacted, That it shall and may be lawful for any person whatsoever (except the person liable to pay any such forfeitures or penalties) to proceed to recover any of the aforesaid forfeitures and penalties, by information and conviction, before any justice or justices of the peace of any county, city, corporation, division, riding, precinct, or liberty, wherein the offence shall happen; and such justice or justices are hereby authorised and empowered, upon due proof made upon oath by one or more credible witness or witnesses, or by the confession of the party accused, to cause the said

forfeiture to be forthwith paid ; and, in case of neglect or refusal, to levy the same by distress and sale of the offender's goods and chattels, by warrant under his or their hand and seal, or hands and seals, together with all costs and charges attending the same, returning the overplus, if any, to the owner ; and every such forfeiture, when paid or recovered, shall be applied, one moiety to the informer, and the other moiety to the poor of the parish where such offence shall have been committed ; and it shall and may be lawful for such justice or justices to order such offender to be detained in safe custody until return may be conveniently had and made to such warrant of distress, unless the party so convicted shall give sufficient security, to the satisfaction of such justice or justices, for his appearance before him or them, on the day appointed for the return of the warrant of distress, such day not exceeding five days from the time of taking such security ; which security the said justice or justices is and are hereby empowered to take by way of recognizance, or otherwise : and in case no sufficient distress can be had, such justice or justices shall commit such offender to the common gaol, or house of correction, there to be kept to hard labour for any time not exceeding six nor less than three calendar months, unless the money forfeited, and all costs and charges attending the prosecution, shall be sooner paid and discharged.

V. Provided always, and be it further enacted, That no offender against the provisions of this act shall be prosecuted for the same offence both by action of law and by information before a justice of the peace ; but, in case of any second prosecution, the person so doubly prosecuted may plead, in his defence, the former prosecution pending, or the conviction or judgment thereupon had.

‘ VI. And, for the more easy conviction of offenders Conviction.





may be lawful for any such justice or justices of the peace, as aforesaid, to administer an oath to any witness or witnesses, or other person or persons, for the better discovery and execution of the several matters and things herein-before directed to be examined into, or performed by such justice or justices respectively. A. D. 1773.  
administer  
an oath.

IX. Provided always, and be it further enacted, That no person shall be proceeded against for any of the offences aforesaid, by information before a justice of the peace, unless such information shall be made upon oath before some justice of the peace for the county or place wherein such offence shall be committed, within three calendar months after such offence shall have been committed.

X. And be it further enacted by the authority afore-said, That if any person shall think himself or herself aggrieved, by any thing done in pursuance of this act, by any justice or justices of the peace, as aforesaid, every such person may appeal to the justices of the peace at any general quarter-sessions of the peace to be held for the county, riding, city, corporation, precinct, or liberty, wherein the cause of such complaint shall arise, and within four calendar months after the cause of such complaint shall have arisen, such appellant giving, or causing to be given, fourteen days notice at the least, in writing, of his or her intention to bring such appeal, and of the matter thereof, to the justice; and every other person or persons, against whom such complaint shall be made, and within four days after such notice, entering into a recognizance before some justice of the peace for the said county, riding, division, city, corporation, precinct, or liberty, with one sufficient surety, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such quarter sessions; and every such justice, and other person, having received notice of such appeal,

A. D. 1778. shall return all proceedings had before them, touching the matter of such appeal, to the said justices, at such quarter-sessions, on pain of forfeiting five pounds for every such neglect; and the said justices, upon due proof of the notice given, and of the entering into such recognizance as aforesaid, shall hear, and finally determine, the causes and matters of such appeal, in a summary way, and award such costs to the parties appealing or appealed against, as they shall think proper; to be levied and recovered as herein-before directed for the recovery of forfeitures and penalties under this act, and the determination of such quarter-sessions shall be final and conclusive, to all intents and purposes; and no proceedings to be had or taken in pursuance of this act shall be quashed or vacated for want of form, or removed by certiorari, or any other writ or process whatsoever, except as herein-before mentioned, into any of his majesty's courts of record at Westminster, any law or statute to the contrary notwithstanding.

Not to extend to Scotland.

XI. And be it further enacted, That nothing in this act contained shall extend to that part of Great Britain called Scotland.

Limitation of actions.

XII. And be it further enacted, That if any action, suit or information, shall be commenced or prosecuted against any person or persons for any thing which shall be done in pursuance of this act, or in execution of any of the powers or authorities hereby given, every such action, suit or information, shall be commenced or prosecuted within the space of six calendar months next after the fact committed, and shall be laid or brought in the county, riding, division or place, where the matter shall arise, and not elsewhere; and the defendant or defendants in every such action, suit or information, shall and may, at his or their election, plead specially, or the general issue, and give this act, and the special matter in evidence: and if a verdict shall be given for

General issue.

the defendant, or if the plaintiff or plaintiffs shall be A. D. 1773.  
 nonsuited, or discontinue his, her or their action, suit or  
 information, after the defendant or defendants shall have  
 appeared; or if, upon demurrer, judgment shall be  
 given against the plaintiff or plaintiffs, then the defend-  
 ant or defendants shall recover treble costs, and have Treble costs.  
 such remedy for the same, as any defendant or defendants  
 hath or have in other cases by law.

XIII. And be it enacted by the authority aforesaid, <sup>Part of act</sup>  
 That so much of an act, passed in the second year of <sup>2 Geo. 3. re-</sup>  
 his present majesty's reign, intituled, "an act for the  
 "better preservation of the game in that part of Great  
 "Britain called England," as relates to heath-fowl,  
 commonly called black-game, or grouse, commonly  
 called red-game, shall be and is hereby repealed.

13 GEO. 3. C. 72. A. D. 1773.

AN ACT TO PERMIT THE FREE IMPORTATION OF COD-  
 FISH, LING, AND HAKE, CAUGHT AND CURED IN  
 CHALEUR-BAY, OR ANY OTHER PART OF THE  
 GULPH OF SAINT LAWRENCE, OR ON THE COAST OF  
 LABRADOR.

13 GEO. 3. C. 80. *Rep.*

AN ACT TO REPEAL AN ACT, MADE IN THE TENTH  
 YEAR OF THE REIGN OF HIS PRESENT MAJESTY,  
 INTITULED, 'AN ACT FOR THE BETTER PRESERVA-  
 TION OF THE GAME WITHIN THAT PART OF GREAT  
 BRITAIN CALLED ENGLAND;' AND FOR MAKING  
 OTHER PROVISIONS IN LIEU THEREOF.

'Whereas by an act passed in the tenth year of the <sup>10 Geo. 3.</sup>  
 'reign of his present majesty, intituled, "an act for <sup>c. 19.</sup>



A. D. 1773. ' the better preservation of the game in that part of  
 ' Great Britain called England,' certain penalties and  
 ' punishments were inflicted on persons killing and de-  
 ' stroying game in the night, between one hour after sun-  
 ' set and one hour before sun-rise : and whereas some  
 ' doubts have arisen concerning the construction of some  
 ' parts of the said act, and some inconveniences have  
 ' followed therefrom ;' therefore, for obviating such  
 doubts, and for remedying such inconveniences, may it  
 please your majesty, that it may be enacted ; and be it  
 enacted by the king's most excellent majesty, by and  
 with the advice and consent of the lords spiritual and  
 temporal, and commons, in this present parliament as-  
 sembled, and by the authority of the same, That from  
 and after the twenty-fourth day of June, one thousand  
 seven hundred and seventy-three, if any person or per-  
 sons shall knowingly and wilfully kill, take, or destroy  
 any hare, pheasant, partridge, moor-game, or heath-  
 game, or use any gun, dog, snare, net, or other engine,  
 with intent to kill, take, or destroy, any hare, pheasant,  
 partridge, moor-game, or heath-game, in the night, that  
 is to say, between the hours of seven of the clock at  
 night and six in the morning, from the twelfth day of  
 October to the twelfth day of February, and between the  
 hours of nine of the clock at night and four in the morn-  
 ing, from the twelfth day of February to the twelfth day  
 of October, every such person being convicted thereof,  
 upon the oath or oaths of one or more credible witness or  
 witnesses, before one or more justice or justices of the  
 peace, acting for the county, riding, or place where the  
 offence shall be committed, shall forfeit and pay for the  
 first offence, any sum not exceeding twenty pounds, nor  
 less than ten pounds ; and for the second offence, an  
 sum not exceeding thirty pounds, nor less than twenty  
 pounds : but in case any information shall be made upon  
 oath, as aforesaid, before any justice or justices, against

Rules to be  
 observed  
 by persons  
 killing hares,  
 &c. or using  
 a gun, &c.

any person offending against this act, and if it shall appear that such offender hath already been convicted of a first and second offence against this act ; then, and in such case, such justice or justices shall and may commit such offender to the common gaol, or house of correction, for the county, riding, or place, there to remain till the next general quarter-session of the peace for the said county, riding, or place, unless such offender shall have entered into a recognizance, with two sufficient securities, to appear at such general quarter-session, then and there to be tried by indictment for the said offence ; and also shall and may bind over the informer to prosecute the said offender by indictment as aforesaid ; and the justices at their said general or quarter-sessions, shall and may direct the said indictment to be tried accordingly ; and if upon such indictment such offender shall be convicted, he shall forfeit and pay in court the sum of fifty pounds ; and in case he shall neglect or refuse to pay the said sum of fifty pounds, he shall be committed to the common gaol, or house of correction, for such county, riding, or place, for any term not less than six nor more than twelve calendar months, unless such penalty shall be sooner paid ; and such offender shall, if the justices think proper, be once publicly whipped for such offence at the expiration of such commitment, in the town or place where such gaol or house of correction shall be, between the hours of twelve and one of the clock in the day.

II. And be it further enacted, That the justice or justices, before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made out in the manner and form following : that is to say ;

|                                 |                      |              |
|---------------------------------|----------------------|--------------|
| ‘ BE it remembered, that on the | day of               | Form of con- |
| ‘ in the year of our Lord       | A. B.                | viction.     |
| ‘ is convicted before me        | one of his majesty’s |              |

A. D. 1773.

How offend-  
ers to be pu-  
nished.

A. D. 1773. ‘justices of the peace for the county of

‘ [specifying the offence, with the time and place where  
‘ the same was committed, and also specifying that it was  
‘ the first or second offence against this act, as the case  
‘ shall be.]

‘ Given under my hand and seal, the day and  
‘ year aforesaid.’

Which conviction the said justice shall cause to be fairly wrote over upon parchment, and returned to the next general quarter session of the peace for the county, riding, or place where such conviction was made, to be filed by the clerk of the peace, and remain and be kept among the records of the county.

Clerk to deliver a copy of conviction on payment of 1s.

III. Provided always, and be it further enacted by the authority aforesaid, That it shall and may be lawful for any clerk of the peace for any county, riding or place, and he is hereby required, upon application made to him by any person or persons for that purpose, to cause a copy or copies of any conviction or convictions, filed by him under the directions of this act, to be forthwith delivered to such person or persons, upon payment of one shilling for every such copy.

Penalties and forfeitures.

IV. And be it further enacted by the authority aforesaid, That the pecuniary penalties and forfeitures hereby to be incurred and made payable upon any conviction, for a first and second offence against this act, and also for a third offence, upon conviction at the quarter-sessions, as aforesaid, together with the costs and charges previous to, and attending such conviction, to be ascertained by the justice or justices before whom any offender shall be convicted, shall be forthwith paid by the person convicted, one moiety of the forfeiture to the informer, and the other moiety to the poor of the parish or place where the offence shall be committed: and in case such person shall refuse or neglect to pay the same,



or to give security for the payment thereof, such justice A. D. 1773.  
or justices shall, by warrant under his or their hand and  
seal, or hands and seals, cause the same to be levied by  
distress and sale of the offender's goods and chattels, to-  
gether with all costs and charges attending such distress  
and sale, returning the overplus (if any) to the owner ;  
and it shall and may be lawful for such justice or jus-  
tices to order such offender to be detained in safe cus-  
tody, until return may conveniently be had and made to  
such warrant of distress, unless the party so convicted  
shall give sufficient security, to the satisfaction of such  
justice or justices, for his appearance before the said  
justice or justices, on such day as shall be appointed by  
the said justice or justices, for the day of the return of the  
said warrant of distress, such day not exceeding seven  
days from the time of taking such security ; which se-  
curity the said justice or justices are hereby impowered  
to take by way of recognizance, or otherwise : but if  
upon such return no sufficient distress can be had, then,  
and in such case, the said justice or justices shall and  
may commit such offender to the common gaol or house  
of correction, of the county, riding or place, for the  
space of three calendar months, unless the money for-  
feited shall be sooner paid, or until such offender, think-  
ing him or herself aggrieved by such conviction, shall  
give notice to the informer, that he or she intends to ap-  
peal to the justices of the peace, at the next general  
quarter sessions of the peace, to be held for the county  
or place wherein the cause of complaint shall arise, and  
shall enter into recognizance before some justice or jus-  
tices, with two sufficient securities, conditioned to try  
such appeal, and to abide the order of, and pay such  
costs as shall be awarded by the justices at such  
quarter sessions ; which notice of appeal being not less  
than fourteen days before the trial thereof, such person  
so aggrieved is hereby impowered to give ; and the said



4 D. 1773 justices at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against, as they the said justices shall think proper; and the determination of such quarter-sessions shall be final, binding, and conclusive, to all intents and purposes whatsoever.

Provisions of  
10 Geo. 3.  
c. 19. re-  
pealed.

V. And be it further enacted, That all the provisions of the said recited act shall be, and are hereby declared to be repealed.

Penalties for  
wilfully kill-  
ing game, or  
using a gun  
on a Sunday  
or Christmas-  
day.

VI. And be it enacted by the authority aforesaid, That from and after the said twenty-fourth day of June, one thousand seven hundred and seventy-three, if any person or persons shall, upon a Sunday, or on Christmas-day, in the day-time, knowingly and wilfully take, kill or destroy any hare, pheasant, partridge, heath-game, or moor-game, or shall upon a Sunday or on Christmas-day, use any gun, dog, net, or engine, for taking, killing, or destroying any hare, pheasant, partridge, moor-game, or heath-game; every such person being convicted thereof, in the manner and form prescribed by this act, shall be subject to the like forfeitures and penalties as are herein-before enacted to be inflicted for other offences against this act.

How penal-  
ties for of-  
fences com-  
mitted are to  
be recovered.

VII. And be it further enacted, That in case any person shall commit an offence against this act, whereby a penalty or punishment is incurred, and dwells in another county than in that in which the offence was committed, the justice or justices, before whom such information or indictment was had or made, may direct his or their warrant of apprehension, and of distress and sale, to any constable within such county, riding, or place, where the offence was committed, to be by him carried to the justice near residing to the place where

the offender dwells in such other county, riding, or A. D. 1773. place, to be signed by him on the back of the said warrant, upon proof on oath of the hand-writing of the justice who first granted the warrant ; which indorsement shall be sufficient authority for the constable of such parish or township where he dwells, or where his goods and chattels, or distress, are to be had and found, or for such constable who shall bring the said warrant to be indorsed, to apprehend and convey such offender before the justice who first granted the warrant, or any other justice or justices of that county where the offence was committed, or for such constable to levy such penalty, by distress and sale, in the same manner, and with the same powers, as might have been done if the person had lived in the county, riding, or place where the offence was committed ; and also, in case where no sufficient distress can be had or found, to convey the offender before the justice who first granted the warrant of distress, or any other justice or justices of that county where the offence was committed, to be dealt with according to law ; and the justice of such other county who indorsed the warrant of distress or apprehension shall direct such constable, or other person taking and making such distress and sale, to deliver over any sums of money for penalties arising from such distress and sale, to the justice of the county who first granted the warrant, to be by him distributed according to the meaning of this act ; and in case such constable or other person shall neglect or refuse to pay such sums of money, or deliver over all proceedings had upon such distress and sale, or warrant of apprehension, such justice who first granted the warrant, or the justice who indorsed it, may commit such constable, or other person so refusing or neglecting to account for the sums of money received, or deliver over the proceedings so had

A. D. 1773. thereupon, to the common gaol, or house of correction, for the space of six months, or until the money shall be paid, and the proceedings delivered over to the justice who first granted the warrant; or in case of his absence or death, to any other justice of the same county, to be by him distributed according to the true intent and meaning of this act: and that no action of trespass, false imprisonment, information, or indictment, or other action or appeal, shall be brought, sued, commenced, or prosecuted, by any person or persons whatsoever, against the justice of such other county who indorsed such warrant, for or by reason of his indorsing the same.

**Proceedings not to be quashed, nor removeable by certiorari.** VIII. Provided always, and be it further enacted, That no order made concerning any of the matters aforesaid, or any other proceedings to be had touching the conviction or convictions of any offender or offenders against this act, shall be quashed for want of form, or be removed by writ of certiorari, or any other writ or process whatsoever, into any of his majesty's courts of record at Westminster.

**Information made on oath.** IX. Provided also, That no person shall be proceeded against for any of the offences against this act, as aforesaid, unless information shall be made thereof upon oath before some justice of the peace for the county, riding, or place, wherein such offence shall be committed, within one calendar month after such offence shall be committed

A. D. 1775.

15 GEO. 3. c. 46. A. D. 1775.

AN ACT FOR AMENDING AND RENDERING MORE EFFECTUAL AN ACT PASSED IN THE ELEVENTH YEAR OF HIS PRESENT MAJESTY'S REIGN, INTITULED, 'AN ACT FOR REGULATING AND IMPROVING THE FISHERIES IN THE RIVER TWEED, AND THE RIVERS AND STREAMS RUNNING INTO THE SAME, AND ALSO WITHIN THE MOUTH OR ENTRANCE OF THE SAID RIVER.'

16 GEO. 3. c. 30. A. D. 1776.

A. D. 1776.

AN ACT MORE EFFECTUALLY TO PREVENT THE STEALING OF DEER, AND TO REPEAL SEVERAL FORMER STATUTES MADE FOR THE LIKE PURPOSE. (a)

'Whereas the statutes now in force for the discovery and punishment of deer-stealers are numerous, and many of them ineffectual: and whereas the good purposes thereby intended might be better effected, if such of the said statutes as are found to be defective were repealed, and such good provisions as are therein contained, together with such further provisions as may be expedient, were reduced into one act; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons shall course or hunt, or shall take in any slip, noose, toyle, or snare, or shall kill, wound or destroy, or shall shoot at, or otherwise attempt to kill, wound or destroy, or shall carry away, any red or fallow-deer, in any forest, chase, purlieu, or ancient walk, whether inclosed or not, or in any inclosed park, Altered and in part repealed by 45 Geo. 3. c. 107. Penalty on any who shall hunt, &c. any fallow-deer, in any forest, &c.

(a) In the summer assize for Hertford, 1783, one Davies was indicted and tried "for hunting and killing a fallow-deer, in an inclosed park," on 9 Geo. 1. c. 22. Though the prisoner



A. D. 1776. paddock, wood, or other inclosed ground, where deer  
 was con- are, have been, or shall be usually kept, without the  
 victed, yet a consent of the owner, or without being otherwise duly  
 question was authorised, or shall be aiding, abetting, or assisting  
 reserved for the opinion therein or thereunto, every person so offending, by  
 of the twelve judges, whether that act coursing, hunting, shooting at, or otherwise attempting  
 was not *virtually* repealed by to kill, wound, or destroy, or by aiding therein or there-  
 16 Geo. 3. unto, shall forfeit, for every such offence, the sum of  
 c. 30. The twenty pounds: and every person so offending by kil-  
 judges de- ling, wounding or destroying, or by taking in any slip,  
 cided that it noose, toyle, or snare, or by carrying away, or by aid-  
 was; in con- ing therein respectively, shall, for every deer so wounded,  
 sequence of killed, destroyed, taken, or carried away, forfeit and  
 which the de- pay the sum of thirty pounds: and if the offender in  
 fendant, at any of the cases aforesaid shall be a keeper of, or person  
 the ensuing in any manner entrusted with the custody or care of  
 assizes, was deer, in the forest, chase, purlicu, ancient walk, or in-  
 discharged. closed park, paddock, or wood, or other inclosed place,  
 2 *East's* where the offence shall be committed, every such of-  
*Pl. C.* fender shall forfeit and pay double the penalty herein-  
 § 609. before appointed to be paid by other offenders; and if  
 any person or persons, after having been convicted of  
 any of the aforesaid offences, shall offend a second time  
 against this act, by committing any of the aforesaid of-  
 fences, such second offence, whether it be the same as  
 the first offence, or be any other of the aforesaid of-  
 fences, shall be deemed and adjudged to be felony, and  
 the person guilty thereof, being lawfully convicted upon  
 indictment, shall be transported to one of his majesty's  
 plantations in America, for the space of seven years.

Persons con- II. And be it further enacted, That every person who  
 victed under hath been, or, before the commencement of this act,  
 former acts, shall be, convicted under any statute now in force, for  
 still liable to unlawfully hunting, coursing, killing, taking, or carry-  
 penalties, &c. ing away, any deer out of any forest, chase, purlicu,  
 ancient walk, park, paddock, wood, or inclosed ground,

shall be subject and liable to the several pains and penalties by such statute provided, in like manner as if this act had not been made; and in case any such offender shall, after the commencement of this act, be guilty and convicted of any of the aforesaid offences against this act (the legal proof of such first or former conviction having been first made), every such person shall be deemed and adjudged to have committed a second offence against this act, in like manner as if this act had been in force at the time of such first conviction, and as if such conviction had been made under the provisions of this act.

‘ III. And, to the intent that the prosecution of persons who shall offend a second time in manner aforesaid, may be carried on with as little expence and trouble as is possible,’ be it further enacted, ‘ That the justice before whom any person shall, after the commencement of this act, be convicted for the first time of any of the offences before-described, shall transmit such conviction, under his hand and seal, to the quarter session which next after such conviction shall be holden for the county, riding, division, city, town, or place, wherein such first offence shall be committed, there to be filed by the clerk of the peace, and to be kept amongst the records of the peace; and such conviction so filed, or a true copy thereof certified and subscribed by such clerk of the peace, shall be sufficient evidence to prove the conviction of such first offence as aforesaid.

IV. And be it further enacted, ‘ That it shall be lawful for any one justice of the peace, upon complaint made to him on oath by any credible persons, that there is reason to suspect any person or persons of having in his, her, or their custody or possession, or in any dwelling-house, out-house, yard, garden, or place, any red or fallow-deer, which shall have been unlawfully killed,

A. D. 1776.

How justices  
to proceed.Justices may  
grant war-  
rants to  
search.

A. D. 1776. or the head, skin, or other part thereof, or any slip, noose, toyle, snare, or other engine, for the unlawful taking of deer, by warrant under his hand and seal, to cause such person and persons, and such dwelling-house, out-house, garden, or place, to be searched; and if any red or fallow-deer suspected to have been unlawfully killed, or the head, skin, or other part thereof, or any slip, noose, toyle, snare, or other engine, suspected to be used for the unlawful taking or killing of deer, shall be found in his, her, or their custody or possession, or in such dwelling-house, out-house, garden, or place, to cause the same and such person or persons so having possession, or in whose dwelling-house, out-house, garden, or other place, the same shall be found, to be brought before any justice of the peace having jurisdiction; and if such person or persons shall not produce before such justice the party of whom he, she or they, received the same, or satisfy such justice that he, she or they, came lawfully by such deer, or the head, skin, or other part thereof, or had a lawful occasion for such slip, noose, toyle, snare, or other engine, or did not keep the same for any unlawful purpose, then every such person shall forfeit any sum not exceeding thirty pounds nor less than ten pounds, at the discretion of such justice.

In case persons cannot be convicted, how justices to proceed.

V. And be it further enacted, That if any red or fallow-deer, suspected to have been unlawfully killed, or the head, skin, or other part of such deer, shall, on a search under a warrant from any justice of the peace, be found in the possession or custody of any person or persons, or in any dwelling-house, out-house, garden, or other place, or shall be proved to have been in the possession, house, out-house, garden or place, of any person or persons who may be justly suspected to have come dishonestly or unlawfully by the same as aforesaid; and such person or persons so in possession, or the

owner or occupier of such dwelling-house, out-house, A. D. 1776. garden, or other place, shall not, under the provisions aforesaid, be liable to conviction ; then, and in every such case, for the discovery of the party or parties who actually killed or stole such deer, it shall and may be lawful to and for any justice of the peace having jurisdiction, as the evidence given and the circumstances of the case shall require, to summon before him, at his discretion, every person through whose hands such deer, or the head, skin, or other part thereof so found, shall appear to have passed ; and if the person and persons from whom such deer, or the head, skin, or other part thereof, shall appear to have been first received, or who having had possession thereof, shall not give proof, to the satisfaction of such justice, that he, she or they came lawfully by the same, such person or persons shall, on every conviction, forfeit and pay any sum not exceeding thirty pounds nor less than ten pounds, at the discretion of such justice.

VI. And be it further enacted, That in case it shall <sup>Suspected persons, &c.</sup> appear, on the oath of a credible witness, that any person or persons hath or have had in his, her or their possession, house, out-house, garden, or place, any red or fallow-deer, or the skin, head, or other part thereof, and shall be reasonably suspected to have come dishonestly or unlawfully thereby, then, and in every such case, every such person or persons, and all other persons through whose hands the same shall appear to have passed under the like suspicion, shall and may be proceeded against in like manner and form, and on conviction shall be subject and liable to the same penalty or penalties, as if such deer, or the head, skin, or other part thereof, had been found in the possession, house, out-house, garden or place, of such person or persons, upon a search made under and by virtue of any such warrant as aforesaid.



A. D. 1776.  
Penalty on  
setting nets,  
&c.

VII. And be it further enacted, That in case any person or persons shall set, lay or use any net, wire, slip, noose, toyle or other engine, for the purpose of taking or killing deer, within or upon any forest, chace, purlieu or ancient walk, or in the ring or outer fence or bank dividing the same from the adjoining lands; or in any inclosed park, paddock, wood or ground, where deer are, have been, or shall be usually kept, such person or persons, not being the owner of such forest, chace, purlieu, ancient walk, park, paddock, wood or ground, or entrusted with the care of the deer within the same, and shall be convicted of any of such offences, every such offender shall forfeit and pay, for the first offence, any sum not exceeding ten pounds nor less than five pounds; and if afterwards convicted of any of the offences last-mentioned, shall, on every conviction after the first, forfeit and pay any sum not exceeding twenty pounds nor less than ten pounds: which said respective forfeitures shall be set at the discretion of the justice or justices before whom the offender or offenders shall be convicted of such first or further offence.

Penalty on  
pulling down  
pales, &c.

VIII. And be it further enacted, That if any person or persons shall at any time wilfully pull down or destroy, or cause to be wilfully pulled down or destroyed, the pale or pales, or any part of the walls of any forest, chace, purlieu, ancient walk, park, paddock, wood or other ground, where any red or fallow-deer shall be then kept, without the consent of the owner or person chiefly entrusted with the custody thereof, or being otherwise duly authorised, every person so offending shall be subject unto the forfeiture and penalty hereby inflicted for the first offence of killing of any deer.

Penalty on  
carrying fire  
arms, &c.

IX. And be it further enacted, That if any person or persons carrying any gun or other fire-arms, or any sword, staff, or other offensive weapon, shall come into any forest, chace, purlieu or ancient walk, or into any

inclosed park, paddock, wood, or into any other ground A. D. 1776. where deer are usually kept, be the same inclosed or not inclosed, with an intent unlawfully to shoot at, course or hunt, or to take in any slip, noose, toyle, snare or other engine, or to kill, wound, destroy or take away, any red or fallow-deer, it shall be lawful for every ranger or keeper, or person entrusted with the care of such deer, to seize and take from such person and persons, in and upon such forest, chace, purlien, ancient walk, park, paddock, wood or other ground, to and for the use of the owner thereof respectively, all such guns, fire-arms, slips, nooses, toyles, snares or other engines, and all dogs there brought for coursing deer, in the same and like manner as the game-keepers of manors are empowered by law, within their respective manors, to seize and take dogs, nets, or other engines, in the custody of persons not qualified by the laws to keep the same; and if any such person or persons shall there unlawfully beat or wound any ranger or keeper, or his or their servants or assistants, in the execution of his or their office or offices, or shall attempt to rescue any person in the lawful custody of any such ranger, keeper, servant or assistant, every person so offending shall be deemed and adjudged to be guilty of felony, and on being lawfully convicted on indictment, shall be transported to one of his majesty's plantations in America, for the space of seven years.

X. And be it further enacted, That, upon complaint or information upon oath, of any one or more credible witness or witnesses, before any one justice of the peace having jurisdiction, of any offence committed against this act, it shall and may be lawful to and for such justice (except in such cases only where the justice is specially directed previously to summon the party before him) to cause the person or persons, who shall be charged by such complaint or information, to be appre-

How justices  
to proceed on  
information  
of offences.

A. D. 1776. hended by warrant under the hand and seal of such justice, and to be brought before him at such time and place as shall be specified in and by such warrant, and thereupon such justice shall and may proceed to hear the matter of such complaint or information, and to adjudge and determine the same; and in such case where it is provided by this act, that the party complained of shall be summoned to appear, if the party so summoned shall not appear according to such summons, then, upon due proof made of the service of such summons, either personally, or by leaving the same at his dwelling-house, lodgings or other usual place of abode, it shall be lawful for the justice, before whom the party was so summoned to appear, to apprehend such party by warrant, and to proceed as if no previous summons had been directed by this act.

#### Penalties.

XI. And be it further enacted, That all the pecuniary penalties of this act shall be recoverable before one or more justice or justices of the peace for the county or other division in which the offence shall be committed, on proof of the offence, by the oath of one or more credible witness or witnesses, or on confession of the offender; and one moiety of each penalty shall belong to the king's majesty, his heirs and successors, and be paid, for his and their use, into the hands of such person or persons as the said justice or justices shall direct, and the other moiety thereof shall belong and be paid to the informer or informers prosecuting for the same; and in case of non-payment thereof, with the charges incident to the conviction, immediately upon the conviction, the said penalty or penalties, and the charges incident, shall be levied by distress and sale of the goods and chattels of every such offender, by warrant under the hand and seal or hands and seals of the justice or justices before whom such conviction shall be made; and for want of sufficient distress, the offender or offenders, except in

such cases only where it is otherwise provided by this A. D. 1776. act, shall be sent by the said justice or justices to the common gaol of the county or place where the offence shall be committed for the space of one whole year, without bail or mainprize, unless the said penalty, and charges incident, shall be sooner paid.

‘ XII. And, to the end that persons convicted of any of the offences for which pecuniary penalties are inflicted by this act, may not, by flight or removal after conviction, evade imprisonment where such penalties shall not be paid on conviction, and sufficient distress cannot be found for raising such penalties,’ be it further enacted, That it shall and may be lawful for the justice or justices of the peace, before whom any offender shall be convicted of having incurred any pecuniary penalty of this act, immediately after such conviction, to order him or her into custody, in case he or she shall not immediately pay the penalty due on such conviction, during such time, not exceeding three days, as such justice or justices shall think proper to allow for return of the warrant for raising the penalty by distress and sale as aforesaid.

XIII. Provided always, That if it shall appear to the Proviso. satisfaction of such justice or justices, either by the confession of the party convicted or otherwise, that such party hath not goods or chattels sufficient whereon to levy the penalty or penalties so due, then, and in such case, the said justice or justices shall and may, without issuing any warrant of distress, proceed to commit the party so convicted, as if a warrant of distress had been issued, and a *nulla bona* returned thereon.

XIV. Provided also, That if any person, committed Regulations for any first offence against this act, shall, before his <sup>where security is</sup> commitment to prison, procure security to be given by given. two sufficient sureties, to the satisfaction of the justice or justices before whom he shall be so convicted, for



A. D. 1776. payment of the penalty or penalties incurred, with the charges incident, within six days, inclusive of the day of conviction, then, and in such case, it shall be lawful for such justice or justices to accept such security, and upon non-payment thereof at the time to be stipulated for that purpose, to cause the party convicted, and his said sureties, to be apprehended by warrant under his or their hand and seal, or hands and seals, and them to commit to the common gaol of the county or place where the offence was committed, for such space of time as the party convicted was subject and liable to have been imprisoned in case no such security had been given, unless the penalty or charges shall be sooner paid.

Keeper may  
apprehend  
persons, &c.

XV. And be it further enacted, That it shall and may be lawful for any keeper or under-keeper of any forest, chase, park, ancient walk, paddock, park, or other ground inclosed, where deer are, have been, or shall be usually kept, and their servants or assistants, to seize and apprehend, upon the spot, any person or persons whom they shall discover in the actual fact of hunting, coursing, killing, wounding, shooting at, taking, destroying, or carrying away any red or fallow-deer from any such forest, chase, park, or ancient walk, whether inclosed or not, or in any inclosed park, paddock, wood, or in any other inclosed ground, or attempting so to do, or in setting or laying any net, wire, slip, noose, toyle, snare, or other engine therein, for the taking, killing, or destroying of deer therein, and to carry such offender or offenders before some neighbouring justice of the peace having jurisdiction, to be dealt with according to law.

Offenders  
committed,  
may be en-  
larged.

XVI. And be it further enacted, That in case any offender for his first offence against this act shall, for want of a sufficient distress, be committed to gaol, and shall, whilst in gaol, obtain the consent in writing of the prosecutor, and also of the owner, ranger, forester, keeper, or

other person chiefly entrusted with the care of the deer A. D. 1776.  
 in the forest, chace, purlieu, ancient walk, park, paddock, or place, wherein the offence was committed, for his enlargement; that then, and in every such case, it shall and may be lawful to and for the justices of the peace having jurisdiction, at their general or quarter sessions, to cause such offender to be brought before them, and thereupon by their order to direct the keeper of such gaol to set such offender at liberty; and the said keeper is hereby directed to obey such order accordingly; any thing herein-before contained to the contrary notwithstanding.

XVII. And, for the better discovery of offenders Discovery,  
 against this act, be it further enacted, That any person &c.  
 who shall offend against this act, and shall make discovery of any other person or persons who hath or have offended against the same, so as he, she, or they, be duly convicted of such offence according to this act; then, and in such case, such discoverer shall be discharged of all the forfeitures and penalties of this act, by him, her, or them incurred previous to such discovery.

XVIII. And, in order to prevent the quashing of low justices  
 'convictions of offenders against this act for want of to proceed  
 'form,' be it further enacted, That the conviction and for conviction  
 convictions of all and every offenders against this act of offenders.  
 shall be certified by the justice or justices of the peace before whom the same shall be made, to the next general quarter sessions of the peace, to be filed amongst the records of the said sessions; and that such conviction shall be fairly written on parchment or paper in the following form of words, as the case shall happen, or in any other form of words to the like effect; that is to say, (to wit),

' BE it remembered, that on the

day of Form of con-  
viction.

A. D. 1776. ‘

in the year

A. B. was,

‘ upon the complaint of C. D. convicted before  
 ‘ of the justices of the peace for  
 ‘ in pursuance of an act passed in the  
 ‘ year of the reign of his majesty King George  
 ‘ the Third, for [as the case shall be.]  
 ‘ Given under hand and seal, the  
 ‘ day and year above written.’

Which said conviction shall be good and effectual in law to all intents and purposes, and shall not be quashed, set aside, or adjudged void or insufficient, for want of any form or words whatsoever.

Certiorari  
not allowed,  
unless, &c.

XIX. And be it further enacted, That no certiorari shall be allowed to remove any conviction made, or other proceedings, of, for, or concerning any matter or thing in this act, unless the party or parties convicted shall, before the allowance of such certiorari, become bound to the person or persons prosecuting in the sum of one hundred pounds, with sufficient sureties as the justice or justices of the peace before whom the offender was convicted, with condition to pay unto the said prosecutors, within thirty days after such conviction confirmed, on a procedendo granted, their full costs and damages, to be ascertained upon their oaths; and shall become also bound to the justice or justices of the peace before whom such conviction was made, with such sufficient sureties as such justice or justices shall approve of, in the penalty of sixty pounds for each offence, with condition to prosecute such writ of certiorari with effect, and to pay such justice or justices the forfeitures due by such conviction, to be distributed as by this act is directed, or to render the person or persons convicted to such justice or justices, within thirty days next after such conviction shall be confirmed, or a procedendo granted; and that in default thereof, it shall be lawful to proceed

to the levying of the penalty mentioned in such conviction, in such manuer as if no such certiorari had been awarded. A. D. 1776.

XX. And be it further enacted, That after the confirmation of any conviction or convictions upon this act, by any of the superior courts at Westminster, and delivering the rule to the said justice or justices, whereby such conviction or convictions hath or have been so confirmed, it shall and may be lawful for such justice or justices to proceed against the party or parties convicted, in the same manner as if a procedendo had been granted. Confirmation  
of convictions.

XXI. Provided always, and it is hereby declared and enacted, That if any person or persons shall think him, her, or themselves aggrieved by the judgement or determination of any justice or justices of the peace, upon conviction of or for any of the offences in this act, and shall not have sought his remedy by removing the matter by certiorari as aforesaid, such person or persons may appeal from the judgement of the said justice or justices, to the general or quarter sessions of the peace, to be held for the said county, division, or place, where such person or persons was or were convicted, next after the expiration of twenty days from the time of such conviction; but the person or persons so appealing shall, and he, she, and they, are hereby required and directed to give at least six days notice in writing to the prosecutor or prosecutors of such person or persons as shall so appeal, of such his, her, or their intention of bringing and prosecuting such appeal, and of the matter thereof, and shall enter into recognizance before some justice or justices of the peace for the county, division, or place, wherein the conviction or judgement was made or given, with two sufficient sureties, to be approved by the said justice or justices, on conviction, to appear and try such appeal at the general or quarter session which shall



A. D. 1776. be held in and for the county, division, or place, where-  
in such conviction or judgement was made or given, next  
and immediately after the expiration of ten days from  
the time of such conviction, and to abide by the order  
or determination of such court, and for payment of  
such costs and charges as shall be awarded at the said  
court ; and every such appeal and appeals shall, by the  
court at the said general or quarter sessions, to which  
such appeal or appeals is or are made, be then examined,  
and the facts and circumstances of the case fully in-  
quired into, and the matter then finally heard and de-  
termined ; and in case such judgement, determination,  
or conviction, as aforesaid, shall be then and there af-  
firmed, the party appealing shall pay unto the prose-  
cutor or prosecutors, his, her, or their full costs, to be  
ascertained by order of the said court of general or quar-  
ter-sessions.

XXII. Provided also, That in case any person or per-  
sons, thinking him, her, or themselves aggrieved, as  
aforesaid, shall have paid the penalty inflicted by this  
act for the offence of which he, she, or they shall have  
been convicted, or shall be then imprisoned ; every  
such person or persons having so paid, or being so im-  
prisoned, may appeal to such judgement, order, deter-  
mination, or conviction as aforesaid, on entering into  
recognizance, by himself, herself, or themselves only,  
and without any surety or sureties, conditioned as be-  
fore-mentioned, the said penalty remaining in the hands  
of such justice or justices, or such person or persons  
continuing in prison in the mean time, and until the  
merits of the said appeal shall be heard and finally de-  
termined.

Proceedings  
not to be  
quashed, &c.

XXIII. Provided also, That no such conviction  
made, or judgement given as aforesaid, shall be set aside  
by the said court of general or quarter sessions, for want  
of form, or for want of stating, or through the mistating

of any facts, circumstances, or matter whatsoever, in A. D. 1776.  
 case the facts alledged in the said conviction, or on  
 which the same shall be grounded, shall be proved to  
 the satisfaction of the said court ; but such appeal and  
 appeals shall be decided on the merits of the case only ;  
 nor shall such conviction or judgement be removed or  
 removeable by certiorari, or any other writ or process  
 whatsoever, into any of his majesty's courts of record  
 at Westminster ; any law or statute to the contrary not-  
 withstanding.

XXIV. Provided also, and be it enacted, That if  
 any person or persons shall be sued or prosecuted for  
 any matter or thing which he or they shall do in pur-  
 suance of this act, it shall and may be lawful to and  
 for the person or persons so sued or prosecuted to plead  
 the general issue, and give the special matter in evi-  
 dence ; and if a verdict shall pass for the defendant, or <sup>General</sup> issue.  
 the plaintiff shall become nonsuit, or suffer a discon-  
 tinuance ; or if, upon a demurrer, judgement shall be  
 given against the plaintiff, the defendant shall have  
 and recover his treble costs, and have the like remedy <sup>Treble costs.</sup>  
 for the same as any defendant hath in any other case  
 by law.

XXV. And be it further enacted, That every prose-  
 cution for any offence against this act, shall be com-  
 menced within twelve calendar months, but not after,  
 from the time of the offence committed ; and that such  
 persons as shall be prosecuted under this act for any of  
 the offences aforesaid, shall not be liable to prosecution  
 for the same offences under any other act of parliament,  
 or in any court of attachment, swainmote, eyre, or any  
 forest court.

XXVI. And be it further enacted, That all actions, <sup>Limitation</sup>  
 writs, and prosecutions, to be commenced against any <sup>of actions.</sup>  
 person or persons for any thing to be done under or in  
 pursuance of this act, shall be laid and tried in the

1776. county or place where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise.

XXVII. And be it further enacted, That this act shall commence and begin to be in force on the tenth day of June, in the year of our Lord one thousand seven hundred and seventy-six : and from and immediately after the commencement thereof, so much of the thirteenth chapter of the first part of the statutes made in the thirteenth year of the reign of Richard the Second, as inflicts a penalty on those who shall use heys, nets, or other engines, for destroying deer ; so much of the eleventh chapter of the statutes made in the nineteenth year of the reign of King Henry the Seventh, as relates to deer ; and also so much of an act, made in the fifth year of the reign of Queen Elizabeth, intituled, ‘ an act for punishing of unlawful taking fish, deer, or ‘ hawks, as relates to deer ;’ and also so much of an act, made in the third year of the reign of King James the First, intituled, ‘ an act against unlawful hunting, and ‘ stealing of deer and conies, as relates to deer ;’ and also so much of an act, made in the seventh year of the reign of the said King James the First, intituled, ‘ an act for ‘ the explanation of one statute made in the second session of this present parliament,’ intituled, “ an act “ against unlawful hunting, and stealing of deer and “ conies,” as relates to deer, except such part thereof as repeals any part of the statutes of the third of James before-mentioned ; and also an act, made in the thirteenth year of the reign of King Charles the Second, intituled, ‘ an act to prevent the unlawful coursing, hunting, or ‘ killing of deer ;’ as also an act, made in the third and fourth years of the reign of their late majesties King William and Queen Mary, intituled, ‘ an act for the ‘ more effectual discovery and punishment of deer- ‘ stealers ;’ and also an act, made in the fifth year of the

reign of his late majesty King George the First, intituled, ‘an act for making more effectual an act of the

A. D. 1776.

<sup>5</sup> Geo. 1.

‘third and fourth years of the reign of King William ‘and Queen Mary,’ intituled, “an act for the more effectual discovery and punishment of deer-stealers ;” and also so much of an act, made in the tenth year of the reign of his late majesty King George the Second, <sup>10</sup> Geo. 2. intituled, ‘an act for continuing an act, for the more ‘effectual punishing wicked and evil-disposed persons ‘going armed in disguise, and doing injuries and ‘violences to the persons and properties of his majesty’s ‘subjects, and for the more speedy bringing the offenders to justice ; and for the continuing two clauses ‘to prevent the cutting or breaking down the bank of ‘any river or sea bank, and to prevent the malicious ‘cutting of hop-binds, contained in an act passed in the ‘sixth year of his present majesty’s reign ; and for the ‘more effectual punishment of persons removing any ‘materials used for securing marsh or sea walls or banks, ‘and of persons maliciously setting on fire any mine, ‘pit, or delph of coal, or cannel coal, and of persons ‘unlawfully hunting or taking any red or fallow-deer ‘in forests or chaces, or beating or wounding keepers ‘or other officers in forests, chaces, or parks ; and for ‘the more effectually securing the breed of wild-fowl ;’ as relates to the second conviction of any person or persons for unlawfully coursing, hunting, taking in toyles, killing, wounding, or taking away, any red or fallow deer, in any open or uninclosed forest or chace, or relates to beating or wounding keepers or other officers in forests, chaces, or parks ; shall be, and the same are hereby respectively repealed.

XXVIII. Provided always, and be it further enacted, That nothing contained in this act shall extend to that part of Great Britain called Scotland.



A. D. 1778.

18 GEO. 3. C. 33. A. D. 1778.

An Act for the better preservation of Fish, and regulating the Fisheries, in the Rivers Severn and Verniew.

36 GEO. 3. C. 118. A. D. 1796.

A. D. 1796. AN ACT TO AUTHORIZE THE SALE OF FISH AT BILLINGSGATE BY RETAIL.

2 Geo. 3.

c. 15. recited.

‘ Whereas by an act passed in the second year of the reign of his present majesty, intituled, “ an act for the better supplying the cities of London and Westminster with fish, and to reduce the present exorbitant price thereof, and to protect and encourage fishermen ;” it is enacted, among other things, that no person or persons, from and after the first day of May, one thousand seven hundred and sixty-two, shall a second time sell, or expose to or for sale, in Billingsgate-market, or within the space of 150 yards from Billingsgate-dock, or any other market in the city of London, or within the weekly bills of mortality, any fish which, in the same day, shall have been before sold in the same market : and whereas the retailing of fish at Billingsgate would be of great public utility and convenience, and tend materially to reduce the exorbitant price of fish : but inasmuch as such retailing of fish may not be practised whilst the said provision contained in the said act remains in force : may it please your majesty, that it may be enacted : and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That so much of the said herein-before in part recited act, passed in the second year of the reign of his present majesty, as restrains or prohibits the sale of fish by way of retail in Billingsgate-market, or within the space of one hundred and fifty yards from Billingsgate-dock, in

so much of the recited act as restrains the sale of fish by retail at Billingsgate repealed.

the same day upon which the same shall have been be- A. D. 1796.  
fore sold in the same market, or within the said space of  
one hundred and fifty yards from Billingsgate-dock,  
but no further, or otherwise, shall, from and after the  
passing of this act, be; and the same is hereby repealed.

II. And be it further enacted, That notwithstanding <sup>Authorizing</sup>  
the provisions to the contrary in the said herein-before <sup>the sale of</sup>  
recited act, or in any other act or acts of parliament to <sup>fish at Bil-</sup>  
the same or the like effect contained, it shall and may <sup>lingsgate by</sup>  
be lawful for any person or persons, from and after the <sup>retail.</sup>  
passing of this act, by way or in the manner of retail,  
(but in no other manner) to sell a second time, and not  
oftener, in Billingsgate-market, or within the space of  
one hundred and fifty yards from Billingsgate-dock, any  
fish whatever, although the same fish shall on the same  
day have been sold once before by wholesale in the  
same market, or within the space of one hundred and  
fifty yards from Billingsgate-dock; any law, statute,  
usage, or custom, to the contrary thereof in any wise  
notwithstanding.

III. And be it further enacted, That the lord-mayor, <sup>Court of com-</sup>  
aldermen, and commons of the city of London, in com- <sup>mon-council</sup>  
mon-council assembled, shall from and after the passing <sup>to have the</sup>  
of this act, from time to time appoint the hour for the <sup>same juris-</sup>  
commencement of the sale of fish by retail in Billings- <sup>diction over</sup>  
gate-market, or within the said space of one hundred <sup>the said re-</sup>  
and fifty yards from Billingsgate-dock; and that the <sup>tail market</sup>  
said lord-mayor, aldermen, and commons of the city of <sup>as over the</sup>  
London, in common council assembled, shall have the <sup>other public</sup>  
like power, authority, jurisdiction and controul, over <sup>markets of</sup>  
the said market, for the sale of fish by retail, as they <sup>the City.</sup>  
now have over the several other public markets of the  
said city.

IV. And be it further enacted, That this act shall be <sup>Public act.</sup>  
deemed, adjudged, and taken to be a public act, and  
shall be judicially taken notice of as such, by all judges,

A. D. 1796. justices, and other persons whatsoever, without the same being specially pleaded.

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37 GEO. 3. c. 124.

An Act for granting to his Majesty certain Duties on Dogs.

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A. D. 1797.

37 GEO. 3. c. 48. A. D. 1797.

An Act for altering, amending, and rendering more effectual Two Acts, made in the eleventh and fifteenth Years of the Reign of his present Majesty, for the Regulation and Improvement of the Fisheries in the River Tweed, and the Rivers and Streams running into the same, and also within the Mouth or Entrance of the said River.

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37 GEO. 3. c. 95.

An Act to amend Two Acts, made in the Fourth Year of the Reign of Queen Anne, and the first Year of the Reign of King George the First, for the preservation of Salmon and other Fish, in the Rivers within the Counties of Southampton and Wilts.

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A. D. 1798.

38 GEO. 3. c. 41. A. D. 1798.

An Act for repealing the Duties upon Male Servants, Carriages, Horses, Mules, and Dogs; and for granting to his Majesty other Duties in lieu thereof.

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38 GEO. 3. c. 80.

An Act to explain and amend an Act of the present Session of Parliament, intituled, “ An Act for repealing

the Duties upon Male Servants, Carriages, Horses, A. D. 1798.  
Mules and Dogs; and for granting to his Majesty  
other Duties in lieu thereof.

39 GEO. 3. c. 34. A. D. 1799. *Rep.*

A. D. 1799.

AN ACT FOR REPEALING TWO ACTS, PASSED IN THE  
THIRTY-SIXTH YEAR OF THE REIGN OF HIS PRE-  
SENT MAJESTY, WHICH LIMIT THE TIME FOR KILL-  
ING PARTRIDGES IN ENGLAND AND SCOTLAND;  
AND FOR AMENDING SO MUCH OF AN ACT, PASSED  
IN THE SECOND YEAR OF THE REIGN OF HIS PRE-  
SENT MAJESTY, AS RELATES TO SUCH LIMITATION  
WITHIN THAT PART OF GREAT BRITAIN CALLED  
ENGLAND, BY MAKING OTHER PROVISIONS FOR  
THAT PURPOSE.

‘ Whereas by an act passed in the second year of the <sup>2 Geo. 3. c. 15.</sup>  
‘ reign of his present majesty, intituled, “ an act for  
‘ the better preservation of the game in that part of  
‘ Great Britain called England ;” it was amongst other  
‘ things enacted, that no person or persons, after the  
‘ first day of June one thousand seven hundred and  
‘ sixty-two, should, upon any pretence whatsoever,  
‘ take, kill, destroy, carry, sell, buy, or have in his,  
‘ her, or their possession or use, any partridge, between  
‘ the twelfth day of February and the first day of Sep-  
‘ tember, in any year, under the penalty therein men-  
‘ tioned : and whereas by another act passed in the <sup>36 Geo. 3.</sup>  
‘ thirty-sixth year of the reign of his present majesty, <sup>c. 39.</sup>  
‘ for amending the said last-mentioned act, the said re-  
‘ striction was repealed ; and it was enacted, that, from  
‘ and after the passing of the said act, no person or per-  
‘ sons should, on any pretence whatsoever, take, kill,  
‘ destroy, carry, sell, buy, or have in his, her, or their  
‘ possession or use, any partridge, between the twelfth



A. D. 1799. ‘ day of February and the fourteenth day of September,  
 ‘ ber, in any year, under the same penalty as by the  
 ‘ said last-mentioned act is imposed : and whereas by  
 ‘ an act passed in the thirteenth year of the reign of his  
 13 *Geo. 3.* ‘ present majesty, intituled, “ an act for the more ef-  
 c. 54. ‘ fectual preservation of the game in that part of Great  
 ‘ Britain called Scotland, and for repealing and amend-  
 ‘ ing several of the laws now in being relative thereto : ”  
 ‘ it was amongst other things enacted, that every per-  
 ‘ son who should wilfully take, kill, destroy, carry,  
 ‘ sell, buy, or have in his or her possession or use, any  
 ‘ partridge, between the first day of February and the  
 ‘ first day of September, in any year, should be liable to  
 and 36 *Geo. 3.* ‘ the penalty therein mentioned : and whereas by an-  
 c. 54. recited. ‘ other act, passed in the thirty-sixth year of the reign  
 ‘ of his present majesty, for amending the said last-  
 ‘ mentioned act, the said restriction was repealed : and  
 ‘ it was enacted, that from and after the passing of the  
 ‘ said act, every person who should wilfully take, kill,  
 ‘ destroy, carry, sell, buy, or have in his or her posses-  
 ‘ sion or use, within that part of Great Britain called  
 ‘ Scotland, any partridge between the first day of Fe-  
 ‘ bruary and the fourteenth day of September, in any  
 ‘ year, should be liable to the same penalties and for-  
 ‘ feitures as by the said last-mentioned act are imposed :  
 ‘ and whereas it is expedient that the said acts passed  
 ‘ in the thirty-sixth year of the reign of his present ma-  
 ‘ jesty should be repealed, and that the said act of the  
 ‘ second year of his present majesty should be amended,  
 ‘ so far as respects the time so therein limited, within  
 ‘ that part of Great Britain called England, by making  
 ‘ other provisions for that purpose ; may it therefore  
 36 *Geo. 3.* ‘ please your majesty that it may be enacted ;’ and be  
 cc. 39, 54. ‘ it enacted by the king’s most excellent majesty, by and  
 repealed. ‘ with the advice and consent of the lords spiritual and  
 ‘ temporal, and commons, in this present parliament as-

sembled, and by the authority of the same, That from A. D. 1799. and after the passing of this act, the said recited acts, passed in the thirty-sixth year of the reign of his present majesty, shall be, and the same are hereby declared to be repealed.

II. And be it further enacted, That from and after the passing of this act, so much of the said recited act, passed in the second year of the reign of his present majesty, as relates to the taking, killing, destroying, using, or having any partridge, between the twelfth day of February and the first day of September, in any year, shall be, and the same is hereby declared to be repealed.

The act 2 Geo. 3. c. 19. so far as relates to taking, &c. partridges between Feb. 12 and Sept. 1, repealed.

III. And be it farther enacted, That from and after the passing of this act, no person or persons shall, on any pretence whatsoever, take, kill, destroy, carry, sell, buy, or have, in his, her, or their possession or use, any partridge within the kingdom of Great Britain, between the first day of February and the first day of September, in any year; and if any person or persons shall transgress this act in the case aforesaid, every such person shall be liable to the same penalty as, by the said act of the second year of the reign of his present majesty, is laid and imposed on any person or persons transgressing the same; such penalty to be imposed, inflicted, recovered, applied, and disposed of, in such and the same manner, and under such and the same rules, regulations, and restrictions, as in and by the said act is provided and directed with respect to the penalty thereby imposed on persons transgressing the said act.

Persons taking, &c. any partridge between Feb. 1 and Sept. 1. liable to penalties of 2 Geo. 3. c. 19.

A. D. 1800.

39 & 40 GEO. 3. C. 50. A. D. 1800.

AN ACT TO EXTEND THE PROVISIONS OF AN ACT MADE  
IN THE SEVENTEENTH YEAR OF THE REIGN OF KING  
GEORGE THE SECOND, INTITULED, 'AN ACT TO  
AMEND AND MAKE MORE EFFECTUAL THE LAWS RE-  
LATING TO ROGUES, VAGABONDS, AND OTHER IDLE  
AND DISORDERLY PERSONS, AND TO HOUSES OF  
CORRECTION.'

'Whereas idle and disorderly persons frequently as-  
semble and associate themselves to support and assist  
each other in the destruction of game in the night,  
'and are, if interrupted, guilty of great violence, by  
'shooting, maiming, and beating, to the great terror of  
'his majesty's subjects, and to the encouragement of  
'idleness and immorality; and such practices are found  
'by experience to lead to the commission of crimes and  
'felonies:' for the suppression thereof, may it there-  
fore please your majesty that it may be enacted; and  
be it enacted by the king's most excellent majesty, by  
and with the advice and consent of the lords spiritual  
and temporal, and commons, in this present parliament  
assembled, and by the authority of the same, That if  
any persons to the number of two or more shall, after  
the passing of this act, enter into or be found in any fo-  
rest, chase, park, wood, plantation, paddock, field,  
&c. at the times herein specified, having any  
gun or en-  
gine with in-  
tent to kill  
or take game,  
or persons  
aiding with  
offensive  
weapons,  
may be ap-  
prehended,  
and on con-

meadow, or other open or inclosed ground, in the night,  
that is to say, between the hours of eight of the clock at  
night and six in the morning, from the first day of Oc-  
tober to the first day of February, or between the hours  
of ten at night and four in the morning, from the first  
day of February to the first day of October in each and  
every year, having any gun, net, engine, or other in-  
strument, for the purpose and with the intent to destroy,  
take, or kill, or shall wilfully destroy, take, or kill, any

Persons to  
the number  
of two or  
more found  
in any forest,  
&c. at the  
times herein  
specified,  
having any  
gun or en-  
gine with in-  
tent to kill  
or take game,  
or persons  
aiding with  
offensive  
weapons,  
may be ap-  
prehended,  
and on con-

hare, pheasant, partridge, heath-fowl, commonly called A. D. 1800.  
 black game, or grouse, commonly called red game, or <sup>viction be-</sup>  
 any other game; or if any person or persons shall be <sup>fore a justice,</sup>  
 found with any gun, fire-arms, bludgeon, or with any <sup>shall be</sup>  
 other offensive weapon, protecting, aiding, abetting, or <sup>deemed</sup>  
 assisting any such persons as aforesaid, it shall and may <sup>rogues and</sup>  
 be lawful to and for the ranger and rangers, and to and <sup>vagabonds</sup>  
 for the owner and owners, occupier and occupiers, of <sup>within the</sup>  
 any such forest, chase, park, wood, plantation, pad- <sup>meaning of</sup>  
 dock, field, meadow, or other open or inclosed ground, <sup>17 Geo. 2.</sup>  
 and also for his, her, or their keeper and keepers, ser- <sup>cc. 5. &c.</sup>  
 vant and servants, and also for any other person or  
 persons, to seize and apprehend, or to assist in seizing  
 and apprehending such offender or offenders, by virtue  
 of this act, and by the authority of the same to convey  
 and deliver such offender or offenders into the custody  
 of a peace-officer, who is hereby authorized and directed  
 to convey such offender or offenders before some one of  
 his majesty's justices of the peace for the county or  
 place where such offence shall be alleged to have been  
 committed; or in case such offender or offenders shall  
 not be so apprehended, then it shall and may be lawful  
 for any such justice, on information before him on the  
 oath of any credible witness or witnesses, to issue his  
 warrant for the apprehension of such offender or of-  
 fenders: and if, upon the apprehension of any such of-  
 fender or offenders, it shall appear to such justice on the  
 oath of any credible witness or witnesses, that the per-  
 son or persons so charged hath or have been guilty of  
 any or either of the said offences, every such person  
 shall be deemed and taken to be a rogue and a vaga-  
 bond, within the true intent and meaning of an act,  
 made in the seventeenth year of the reign of King  
 George the Second, intituled, ' an act to amend and  
 ' make more effectual the laws relating to rogues and  
 ' vagabonds, and other idle and disorderly persons,



A. D. 1800. ' and to houses of correction,' and shall suffer such pains and punishments as are directed to be inflicted by any law or statute in force and effect on rogues and vagabonds; and in case any person or persons being so convicted shall again offend against any of the provisions of this act, such person or persons shall be deemed and taken to be an incorrigible rogue, and shall suffer such pains and punishments as by any law or statute in force and effect are directed to be inflicted on incorrigible rogues.

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39 & 40 GEO. 3. c. 86.

An Act for the better Preservation of Timber in the New Forest, in the County of Southampton; and for ascertaining the Boundaries of the said Forest, and of the Lands of the Crown within the same.

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A. D. 1801.

41 GEO. 3. c. 99. A. D. 1801.

An Act for granting Bounties for taking and bringing Fish to the Cities of London and Westminster, and other Places in the United Kingdom.

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41 GEO. 3. c. 180.

An Act for enabling his Majesty to grant Commissions for executing an act made in the thirty-ninth and fortieth Years of the Reign of his present Majesty, intituled, "An Act for the better Preservation of Timber, in the New Forest, in the County of Southampton, and for ascertaining the Boundaries of the said Forest, and of the Lands of the Crown within the same.

42 GEO. 3. c. 19. A. D. 1802.

A. D. 1802.

An Act to amend so much of an Act, made in the twenty-ninth Year of the Reign of his late Majesty King George the Second, intituled, ‘ An Act for explaining, amending, and rendering more effectual an Act, made in the Twenty-second Year of his present Majesty’s Reign, intituled, “ An Act for making a free Market for the Sale of Fish in the City of Westminster, and for preventing the forestalling and monopolizing of Fish, and for allowing the Sale of Fish under the Dimensions mentioned in a Clause contained in an Act of the First Year of his late Majesty’s Reign, in case the same are taken with a Hook,” as relates to the Sale of Eels.

42 GEO. 3. c. 37.

An Act for granting to his Majesty certain additional Duties on Servants, Carriages, Horses, Mules, and Dogs; and for consolidating the same with the present Duties thereon.

42 GEO. 3. c. 107.

AN ACT MORE EFFECTUALLY TO PREVENT THE  
STEALING OF DEER.

‘ Whereas it is expedient to make some further provision for preventing the stealing of deer, and the punishment of deer-stealers;’ be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act, if any person or persons shall wil-  
Persons who shall illegally hunt, snare, or shoot, &c.

A. D. 1302. fully course or hunt, or take in any slip, noose, toil or snare, or kill, wound, or destroy, or shoot at, or otherwise attempt to kill, wound, or destroy, or shall carry away, any red or fallow deer, kept or being in the inclosed part of any forest, chase, purlieu, or ancient walk, or any inclosed park, paddock, wood, or other inclosed ground wherein deer are, have been, or shall be usually kept, without the consent of the owner of such deer, or without being otherwise duly authorized, or shall knowingly be aiding, abetting, or assisting therein or thereunto, every person so wilfully offending as aforesaid, in any of the cases above-mentioned, shall be deemed and taken to be guilty of felony, and being lawfully convicted thereof upon indictment, shall be adjudged to be transported for the term of seven years.

Penalty on persons committing such offences in uninclosed ground, 50l.

II. And be it further enacted, That from and after the passing of this act, if any person shall wilfully course or hunt, or take in any slip, noose, toil, or snare, or kill, wound, or destroy, or shoot at, or otherwise attempt to kill, wound or destroy, or shall carry away, any red or fallow deer, kept or being in the uninclosed part of any forest, chase, purlieu, or ancient walk, without the consent of the owner of such deer, or without being otherwise duly authorized, or shall knowingly be aiding, abetting, or assisting therein or thereunto, every person so offending shall, for every such act of wilful coursing or hunting, and for every such attempt to kill, wound, or destroy, and for every deer so taken or killed, wounded or destroyed, or shot at or carried away as aforesaid, in or from any uninclosed part of any forest, chase, purlieu, or ancient walk, forfeit and pay the sum of fifty pounds; and if the offender in any of the cases aforesaid shall be a keeper of, or person in any manner entrusted with the care or custody of deer in the forest, chase, purlieu, or ancient walk, wherein the offence shall

Keepers of deer, &c. offending shall forfeit double.

be committed, he shall for every such offence forfeit and pay double the penalty herein-before enacted to be paid by other offenders. A. D. 1802.

III. And be it further enacted, That all powers, provisions, rules, regulations, methods, forms, restrictions, and all other matters and things enacted, prescribed, appointed, or contained in and by an act of the parliament of Great Britain, made in the sixteenth year of the reign of his present majesty, intituled, ‘ an act more effectually to prevent the stealing of deer ; and to repeal several former statutes made for the like purpose,’ for or concerning the seizing and apprehending, and the conviction of persons offending against the said act, and for or concerning the recovery, application, and disposal of the penalties and forfeitures therein-mentioned, and for or concerning the time and manner of appealing from convictions, and of bringing actions or prosecutions against any person or persons for any thing done under or in pursuance of the said act, and for or concerning the manner of pleading, and other proceedings in such actions, and the costs by the said act given in certain cases, shall, so far as the same respectively are applicable, be in full force and effect, and be applied and made use of in seizing and apprehending and in convicting offenders against this act, and in the recovery, application, and disposal of the penalties and forfeitures hereby imposed, and with respect to the time and manner of appealing from convictions, and of bringing actions and prosecutions against any person for any thing done under or in pursuance of this act, and with respect to the manner of pleading and other proceedings in such actions, and the costs thereof, and for all other purposes to which such powers, provisions, rules, regulations, methods, forms, restrictions, matters, and things, or any of them, are applicable under this act, as fully as if the same had been severally herein contained and set forth :

Provisions of  
16 Geo. 3.  
c. 30. extend-  
ed to this  
act.



A. D. 1302.

In default of payment of penalties, offenders may be committed for six months.

Provided always, that in case of non-payment of any pecuniary penalty or forfeiture imposed by this act, with the charges incident to the conviction, immediately on the conviction, and for want of sufficient distress of the goods and chattels of the offender or offenders, he and they shall be sent by the justice or justices before whom such conviction shall be made, to the common goal of the county, riding, or division, city, town, or place, where the offence was committed, for six months, there to remain without bail or mainprize, unless the penalty and charges incident be sooner paid.

Persons convicted of a second offence, punishable by a pecuniary penalty, shall be adjudged to be felons, &c.

IV. And be it further enacted, That if any person or persons after having been duly convicted of any offence for which a pecuniary penalty or forfeiture is imposed, either by this act or by the said act made in the sixteenth year of the reign of his present majesty, shall offend a second time by committing any offence against this act, for which a pecuniary penalty or forfeiture is herein-before imposed, such second offence, whether it be the same offence as the first offence, or be any other of the said offences, shall be deemed and taken to be a felon, and the person or persons guilty thereof, being lawfully convicted upon indictment, shall be adjudged to be transported for the term of seven years.

convictions for first offences shall be transmitted to quarter sessions, and filed, for proof.

V. And, to the intent that the prosecution of persons who shall offend a second time, may be carried on with as little expence and trouble as may be: be it further enacted, That the justice before whom any person shall be convicted for the first time of any offence against this act, for which pecuniary penalty or forfeiture is imposed, shall transmit such conviction under his hand and seal to the quarter session which next after such conviction shall be holden for the county, riding, or division, city, town, or place wherein such first offence was committed, there to be filed by the clerk of the peace or other proper officer, and kept amongst the records of the court: and such

conviction so filed, or a true copy thereof, certified by A. D. 1802.  
such clerk of the peace or other officer, or proved to be  
a true copy, shall be sufficient evidence to prove the  
conviction for such first offence as aforesaid.

VI. And be it further enacted, That, from and after <sup>So much of</sup>  
the passing of this act, so much of the said act made in <sup>16 Geo. 3.</sup>  
the sixteenth year of the reign of his present majesty, as <sup>c. 30. [See</sup>  
imposes or inflicts any penalty, forfeiture, or punish- <sup>§ 1] as in-</sup>  
ment, on any person who shall hunt or course, or take <sup>dicts penal-</sup>  
in any slip, noose, toil, or snare, or kill, wound, or de- <sup>ties for hunt-</sup>  
stroy, or shoot at, or otherwise attempt to kill, wound, <sup>ing or shoot-</sup>  
or destroy, or carry away, any fallow deer in any forest, <sup>ing deer, &c.</sup>  
chace, purlieu, or ancient walk, whether inclosed or not, <sup>repealed.</sup>  
or in any inclosed park, paddock, wood or other in-  
closed ground, where deer were or had been or should  
be usually kept, without the consent of the owner, or  
without being otherwise duly authorized, or who shall  
be aiding, abetting, or assisting therein, shall with re-  
spect to the said offences committed after the passing of  
this act, be and the same is hereby repealed.

VII. Provided always, and be it further enacted, <sup>Not to ex-</sup>  
That nothing herein contained shall extend to those <sup>tend to Scot-</sup>  
parts of the United Kingdom called Scotland and <sup>land or Ire-</sup>  
Ireland. <sup>land.</sup>

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42 GEO. 3. c. 88.

An Act for repealing so much of an Act, made in the <sup>2 Geo. 3. c. 15.</sup>  
Second Year of the Reign of his present Majesty,  
intituled, ‘ An Act for the better supplying the Ci-  
‘ ties of London and Westminster with Fish, and to  
‘ reduce the present exorbitant Price thereof, and to  
‘ protect and encourage Fishermen,’ as limits the  
Number of Fish to be sold by wholesale within the  
said City of London; and for the better Regulation

A. D. 1802. of the sale of Fish by wholesale in the Market of Billingsgate within the said City.

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A. D. 1803.

43 GEO. 3. c. 23. A. D. 1803.

An Act for granting to his Majesty certain Duties upon Certificates with respect to the killing of Game in Ireland.

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43 GEO. 3. c. 31.

An Act for establishing certain Regulations in the Office of Surveyor-general of his Majesty's Woods, Forests, Parks and Chaces.

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43 GEO. 3. c. 112. *Rep*

AN ACT FOR THE BETTER PRESERVATION OF HEATH-FOWL, COMMONLY CALLED BLACK GAME, IN THE NEW FOREST, IN THE COUNTY OF SOUTHAMPTON.

13 Geo. 3.  
c. 55 § 1.

‘ Whereas by an act passed in the parliament of  
 ‘ Great Britain, in the thirteenth year of the reign of  
 ‘ his present majesty, intituled, “ an act to explain  
 ‘ and amend the several laws now in being, so far as the  
 ‘ same relate to the preservation of the moor or hill-  
 ‘ game,” it is enacted, amongst other things, that from  
 ‘ and after the twenty-fourth day of June, one thousand  
 ‘ seven hundred and seventy-three, no person or persons  
 ‘ shall, upon any pretence whatsoever, wilfully take,  
 ‘ kill, destroy, carry, sell, buy, or have in his, her, or  
 ‘ their possession or use, any heath-fowl, commonly  
 ‘ called black-game, between the tenth day of De-  
 ‘ cember and the twentieth day of August in any year :  
 ‘ and whereas the pursuing, taking, and killing in the  
 ‘ New Forest, in the county of Southampton, of heath-

fowl, commonly called black game, so early as the A. D. 1803.  
 twentieth day of August, has been found to be very  
 prejudicial to the increase of such heath-fowl, as well  
 as of all other game within the said forest, and it would  
 tend very much to the preservation thereof in the said  
 forest, if the time for taking and killing therein heath-  
 fowl were postponed ;' be it therefore enacted by the  
 king's most excellent majesty, by and with the advice  
 and consent of the lords spiritual and temporal, and  
 commons, in this present parliament assembled, and by  
 the authority of the same, 'That from and after the pass-  
 ing of this act, no person or persons shall, on any pre-  
 tence whatsoever, take, kill, or destroy, or attempt to  
 take, kill, or destroy, in the New Forest, in the county  
 of Southampton, any heath-fowl, commonly called  
 black-game, between the tenth day of December and the  
 first day of September in any year ; and every person  
 who shall transgress this act in any of the cases afore-  
 said, shall, for every heath-fowl so taken, killed, or de-  
 stroyed, and for every attempt to take, kill, or destroy  
 such heath-fowl, contrary to the true intent and meaning  
 of this act, be liable to the same forfeitures and penalties,  
 to be recovered in the same manner, and subject to the  
 like appeal and the same provisions in every respect  
 whatsoever, as in and by the said recited act are enacted  
 in respect of any offence committed against the said act.

Persons tak-  
 ing or killing  
 in the New  
 Forest any  
 black game,  
 between  
 Dec. 10: and  
 Sept. 1, liable  
 to the for-  
 feitures of  
 the recited  
 act.

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43 GEO. 3. c. 61.

An Act to alter and amend Two Acts, passed in the Thir-<sup>13</sup> *Edw. 1.*  
 teenth Year of the Reign of King Edward the First,<sup>c. 47.</sup>  
 and in the Thirteenth Year of the Reign of King Ri-<sup>13</sup> *Rich. 2.*  
 chard the Second, for the Preservation of Salmon and<sup>c. 19.</sup>  
 other Fish in the Rivers Teign, Dart, and Plym, in  
 the County of Devon.



A. D. 1804.

44 GEO. 3. c. 45. A. D. 1804.

An Act for the better regulating and improving the Fisheries in the Arm of the Sea between the County of Cumberland and the Counties of Dumfries and Wigton, and the Stewartry of Kirkcudbright, and also the Fisheries in the several Streams and Waters which run into, or communicate with, the said Arm of the Sea. (32 Geo. 3. c. 94. *for regulating Salmon Fisheries in the Nith repealed.*)

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A. D. 1805.

45 GEO. 3. c. 64. A. D. 1805.

An Act to amend an Act made in the Forty-first Year of his present Majesty, for granting Bounties for taking and bringing Fish to the Cities of London and Westminster, and other places in the United Kingdom.

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45 GEO. 3. c. 33.

An Act for the Preservation of Salmon and other Fish in the Rivers in the County of Carmarthen, and County of the Borough of Carmarthen.

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A. D. 1806.

46 GEO. 3. c. 142. A. D. 1806.

An Act for the better Regulation of the Office of Surveyor-General of Woods and Forests.

A. D. 1806.

46 GEO. 3. C. 19. A. D. 1806.

An Act for the Regulation of the Oyster, Sole, and Salmon Fisheries, within the Harbour of Milford, in the County of Pembroke, and the Rivers running into the said Harbour.

47 GEO. 3. C. 21. A. D. 1807.

A. D. 1807.

An Act to provide for regulating and securing the Collection of certain Rates and Taxes in Ireland, in respect of Dwelling-Houses, Fire-Hearths, Windows, Male Servants, Horses, Dogs, and Carriages.

47 GEO. 3. C. 32.

AN ACT FOR PUNISHING MUTINY AND DESERTION;  
AND FOR THE BETTER PAYMENT OF THE ARMY  
AND THEIR QUARTERS.

LXIX. And for the better preservation of game in or near such place where any officers or soldiers shall at any time be quartered, be it enacted by the authority aforesaid, That if, from and after the said twenty-fourth day of March, one thousand eight hundred and seven, any officer or soldier shall, without leave of the lord of the manor, under his hand and seal first had and obtained, take, kill, or destroy, any hare, coney, pheasant, partridge, pidgeon or any other sort of fowls, poultry, or fish, or his majesty's game, within the United Kingdom of Great Britain and Ireland, and upon complaint thereof shall be, upon oath of one or more credible witnesses or witnesses, convicted before any justice or justices of the peace, who is and are hereby empowered and au- Penalty for officers or soldiers destroying the game. See 41 Geo. 3. c. 11. s. 66. 3 Burn's Justice, 201.

A. D. 1807. **thorised to hear and determine the same ; (that is to say),**  
**every officer so offending shall for every such offence,**  
 forfeit the sum of five pounds, to be distributed among  
 the poor of the place where such offence shall be com-  
 mitted ; and every officer commanding in chief upon the  
 place, for every such offence committed by any soldier  
 under his command, shall forfeit the sum of twenty shil-  
 lings, to be paid and distributed in manner aforesaid ;  
 and if upon conviction made by the justices of the peace,  
 and demand thereof also made by the constable or over-  
 seers of the poor, such officer shall refuse or neglect, and  
 not within two days pay the said respective penalties,  
 such officer so refusing or neglecting shall forfeit, and  
 he is hereby declared to have forfeited his commission,  
 and his commission is hereby declared to be null and  
 void.

Five pounds  
for an officer.

Twenty shil-  
lings for a  
soldier.

Officer on  
non-payment  
cashiered.

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47 GEO. 3. c. 29. A. D. 1807.

**An Act to amend and render more effectual Three Acts,**  
**made in the Eleventh, Fifteenth, and Thirty-seventh**  
**Years of his present Majesty, for the Regulation and**  
**Improvement of the Fisheries of the River Tweed.**

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47 GEO. 3. c. 11.

**An Act to provide for the Recovery of Penalties under**  
**certain Acts, made in the Forty-seventh Year of his**  
**present Majesty, for securing the Rates and Duties in**  
**Ireland, in respect of Dwelling-Houses, Fire-Hearths,**  
**Windows, Male Servants, Horses, Dogs, and Car-**  
**riages ; and on Licences to Persons dealing in excise-**  
**able Commodities ; and on Paper and Paper Hang-**  
**ings : and to alter the Condition of certain Bonds to**  
**be given by Brewers in Ireland.**

A. D. 1808.

48 GEO. 3. C. 55. A. D. 1808.

AN ACT FOR REPEALING THE DUTIES OF ASSESSED TAXES, AND GRANTING NEW DUTIES IN LIEU THEREOF, AND CERTAIN ADDITIONAL DUTIES TO BE CONSOLIDATED THEREWITH; AND ALSO FOR REPEALING THE STAMP DUTIES ON GAME CERTIFICATES, AND GRANTING NEW DUTIES IN LIEU THEREOF, TO BE PLACED UNDER THE MANAGEMENT OF THE COMMISSIONERS FOR THE AFFAIRS OF TAXES.

“Stamp duty on game licences under 44 Geo. 3. c. 98. repealed from June 30, 1808. § 3.”

IV. And be it further enacted, That in lieu of the Duties in respect of killing game, duties hereby repealed, there shall be annually assessed, raised, levied, and paid, to and for the use of his majesty, his heirs and successors, upon every person who shall, after the thirtieth day of June, one thousand eight hundred and eight, use any dog, gun, or net, or other engine, for any of the purposes mentioned in the schedule marked (L.) to this act annexed, the respective duties therein respectively mentioned and set forth; which schedule, and the duties and rules therein contained, shall be deemed and construed to be a part of this act, as if the same were incorporated therewith under a special enactment.

### SCHEDULE (G.)

*A Schedule of the Duties made payable on Dogs.*

For every greyhound, hound, pointer, setting dog, spaniel, lurcher, or terrier, the annual sum of        -        -        -        -        -        0 11 6

For every dog of whatever description or denomination the same may be, where any person shall keep two or more dogs, either



|             |                                         |          |
|-------------|-----------------------------------------|----------|
| A. D. 1808. | for his or her own use, or the use of   | £. s. d. |
|             | any other person or persons, the annual |          |
|             | sum of                                  | 0 11 6   |

For every dog not being a greyhound, hound, pointer, setting dog, spaniel, lurcher, or terrier, kept by any person having one such dog, and no more, whether the same be kept for his or her own use, or the use of any other person or persons, the annual sum of - - - - - 0 7 0

The said duties to be paid by the persons respectively keeping such dogs.

\* *As per*  
*Schedule (M.)*  
Royal family.

*Exemptions from the Duties in Schedule (G.) \**

Case I.—Any dog belonging to his majesty, or any of the royal family.

Poor persons. Case II.—Any person who, on account of poverty, shall be discharged from the assessment made in respect of his or her dwelling-house in pursuance of the regulations of any of the acts herein-mentioned, and having one dog, and no more, the same not being a greyhound, hound, pointer, setting dog, spaniel, lurcher, or terrier.

Whelps. Case III.—Any person in respect of a dog or whelp, which at the time of returning the list of dogs as by this act is required, shall not actually be of the age of six calendar months.

Packs of hounds compounded for. Case IV.—Any person in respect of the whole number of hounds by him or her kept in Great Britain, who shall compound for the same, in any year within thirty days after the fifth day of April in such year, in pursuance of notice given to the collector or collectors of the said duty for any parish or place, where such person shall be liable to be assessed, of his or her intention so to do, and on payment of the full sum of thirty-four pounds

sterling to such collector or collectors, for which a receipt shall be given within the period before-mentioned. A. D. 1808.

### SCHEDULE (L.)

#### *A Schedule of the Duties made payable in respect of killing Game.*

Upon every person who shall use any dog,  $\pounds$ . s. d.  
gun, net, or other engine, for the purpose  
of taking or killing any game whatever, or  
any woodcock, snipe, quail, or landrail, or  
any conies, in any part of Great Britain :

If such person shall be a servant to any person  
duly charged in respect of such servant to  
the duties granted on servants by this act,  
and shall use any dog, gun, net, or other  
engine, for any of the purposes before-men-  
tioned, upon any manor or royalty in Eng-  
land, Wales, or Berwick-upon-Tweed, or  
upon any lands in Scotland, by virtue of  
any deputation or appointment, duly regis-  
tered or entered as game-keeper thereto,  
there shall be charged the annual sum of 1 1 0

And if such person as last aforesaid shall not  
be a servant for whom the said duties on  
servants shall be charged, there shall be  
charged the annual sum of - - - 3 3 0

Upon every other person who shall use any  
dog, gun, net, or other engine, for any of  
the purposes before-mentioned, there shall  
be charged the annual sum of - - - 3 3 0

#### *Exceptions to the above Duties.*

1. The taking of woodcocks and snipes with nets or springes.

A. D. 1808.     2. The taking or destroying of conies in warrens, or in any inclosed ground whatever, or by any person in lands in his or her occupation, either by himself, or herself, or by his or her direction or command.

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*Rules for charging the said last-mentioned Duties.*

Duty for  
using dogs,  
gun, &c.  
shall be paid  
to collectors  
of assessed  
taxes an-  
nually.

I.—Every person who intends to use or shall use at any time after the thirtieth day of June, one thousand eight hundred and eight, any dog, gun, net, or other engine for any of the purposes mentioned in the schedule to this act annexed, marked (L.) shall, before he shall so use the same in any year, pay or cause to be paid in each year unto the collectors of the duties mentioned or referred to in the other schedules of this act, for the parish, ward, or place, where he shall reside, if in England, or to the collector of the cess, or his deputy, for the shire, county, borough, or place where he shall reside, if in Scotland, or one of them respectively as aforesaid for the time being, the duty hereby made payable, and shall obtain a certificate thereof in the manner herein directed; which certificate shall continue in force until and upon the fifth day of April next after the time of issuing the same, and no longer.

Collectors  
shall give  
receipts.

II.—Every collector on application to him made by any person residing within the limits of his collection, and on payment to such collector of the duty hereby made payable, shall give a receipt for the same, which receipt shall be signed by such collector, and made out conformable to such of the forms for certificates in the schedule to this act annexed, as the case may require; and every such receipt shall be a charge on the parish or place for which such collector shall be appointed for the sum therein expressed, in like manner and to the like effect as if the said sum had been previously assessed and levied by such collector under the warrant of the com-

See schedule  
(N.) II.—V.

missioners acting in the execution of this act; for which receipt the said collector shall be entitled to demand and receive from such person, the sum of one shilling over and above the said duty, and no more, which sum shall be deemed the compensation to such collector for his pains and care in executing this act; and the duty so received shall be paid to the receiver-general or his deputy, at his or their next receipt of duties, in full and without deduction; provided that the receipts given for the duties contained in this schedule shall not be liable to any stamp duty whatever.

III.—Every such receipt being delivered to the clerk of the commissioners acting for the district where the person aforesaid shall reside, shall be exchanged for a certificate made out in one of the forms in the schedule to this act annexed, marked (N.) corresponding with such receipt, which certificate the said clerk is hereby required, on demand, to make out and deliver gratis to such person in exchange for the said receipt.

IV.—The said receipts, so exchanged, shall severally be entered by the said clerks respectively in books to be kept for that purpose, in the manner to be directed by the commissioners for the affairs of taxes; and the said books, together with the said receipts, being exhibited to the commissioners acting in the execution of this act for the district, and examined by them, shall be a sufficient authority to them from time to time to cause an assessment to be made on the several persons mentioned in such receipts in the respective sums paid by them, which assessments shall be of the like force and effect, in all respects, and shall be as binding on the several collectors and others acting in the execution of this act, and on the several parishes and places for which such collectors shall have been respectively appointed, as any assessment to be made by the said commissioners respectively under the regulations of the said acts under which they

A. D. 1808.  
His fee one  
shilling.

Receipts  
shall be ex-  
changed for  
certificates  
by clerk to  
commis-  
sioners.

Commis-  
sioners shall  
assess parties  
accordingly.



A. D. 1808. act as commissioners ; and the said commissioners shall return duplicates thereof to the receiver-general, and to the commissioners for the affairs of taxes, in the manner directed by the said acts.

Com-  
mis-  
sioners shall  
provide  
forms of  
receipts and  
certificates.

V.—The commissioners for the affairs of taxes shall cause a sufficient number of receipts to be distributed amongst the several clerks, and by them to the several collectors in their respective districts, and the said clerks respectively shall be accountable to the said commissioners for the affairs of taxes for the same ; and the several collectors shall be accountable to the respective clerks for the same ; and the said commissioners for the affairs of taxes shall also cause a sufficient number of forms to be used for certificates, according to the forms specified in the schedule to this act annexed, marked (N.) to be distributed to the respective clerks in like manner.

Where no  
clerk, sur-  
veyor shall  
act.

VI.—In any district wherein no clerk shall be appointed to act in the execution of the said acts, the surveyor of the same district shall execute the duty of such clerk in all matters and things herein required to be done by such clerk, and in every such case the certificates herein required shall and may be issued by such surveyor, according to the directions of this act ; and in every place for which one collector only shall be appointed, who shall be chargeable to the duty contained in this schedule, an acknowledgment in writing under the hand of such collector, that he is chargeable with the said duty, and delivered to such clerk or surveyor respectively as aforesaid, shall be a sufficient authority for such clerk or surveyor to issue a certificate to such collector, and to make an assessment of the said duty upon such collector as in other cases under this act.

How collec-  
tors shall be  
charged with  
duty, if  
liable.

Game-  
keepers cer-  
tificates.

VII.—Every master or mistress charged or liable to be charged to the duties on servants mentioned in the said schedule marked (C.) No. 1. annexed to this act,

in respect of any gamekeeper, whether such person shall A. D. 1808. have been deputed or appointed by such master or mistress, or by any other person or persons, and every person granting a deputation or appointment to the servant of any other person, who shall be duly charged to the said duty on servants, in respect of such servant, whether as gamekeeper, or in any other capacity, with power and authority to use any dog, gun, net, or other engine, for any of the purposes mentioned in this schedule, shall be at liberty to obtain a receipt and certificate on behalf of such servant, on payment of the duty for the same, in the manner before directed : and such receipt and certificate shall be a sufficient authority to assess the master or mistress or person granting such deputation or appointment, and obtaining such receipt and certificate as aforesaid ; and the certificate to be issued thereupon, shall be deemed and construed to exempt the servant or servants named therein, during his or their continuance in the same capacity and service ; and also to exempt any servant or servants of the same master or mistress who shall succeed to the deputation or appointment of the same manor or royalty, or lands, within the year for which the duty shall be so assessed for and during the remainder of such year ; and no such servant in whose behalf a receipt and certificate hath been duly obtained as aforesaid, shall be required to obtain a certificate for himself, nor be liable to the duty hereby granted, nor to any penalty by reason of not obtaining a certificate in his own name, or for not paying the said duty : provided always, that every certificate granted under this act to any person acting under any deputation or appointment, shall, upon the revocation of such deputation or appointment, be from thenceforth void and no further effect, as to the person therein deputed or appointed : provided, that if any lord or lady of any manor in England, Wales, or Berwick-upon-Tweed, or

A. D. 1803. proprietor of lands in Scotland, shall, on the revocation of any deputation or appointment by virtue of which a certificate hath been granted for any year, make a new deputation or appointment within the same year, to any person in his or her service, or in the service of the same master or mistress who shall have been charged, as well to the duties on servants as to the game duties granted by this act, it shall be lawful for the clerk to the commissioners of the district, and every such clerk is hereby required in such case to renew the certificate for the remainder of that year, in behalf of the person so newly appointed, without any duty or fee, by endorsing on such certificate the name and place of abode of the person to whom such last-mentioned deputation or appointment had been granted, and declaring the same to be a renewed certificate, free of duty or fee.

Unqualified  
persons not  
protected by  
certificate,  
&c.

VIII.—Neither the assessment of the duty hereby imposed, nor the payment thereof, nor the certificate delivered, nor any thing herein contained or done in pursuance of this act, shall authorize or enable any person to use any dog, gun, net or other engine, for any of the purposes mentioned in this schedule, at any time or times, or in any manner prohibited by any law in force at and immediately before the passing of this act, nor unless such person shall be duly qualified so to do, under and by virtue of the laws in being: and all penalties and forfeitures, actions and suits, shall and may be prosecuted and maintained for such offences as if this act had not been made.

Game-  
keeper's  
certificate  
confined to  
the manor.

IX.—No assessment or certificate under this act, or payment of the duty hereby imposed, by or for any person acting under a deputation or appointment, shall be received in evidence, or be available in law or equity, in any suit or prosecution under this act, where proof shall be given of using any dog, gun, net, or other engine, for any of the purposes mentioned in this schedule, out of



the precincts or limits of the manor, royalty, or lands A. D. 1808.  
for which such deputation or appointment was made or  
granted.

X.—If any person shall be found using any dog, gun, Certificates shall be produced by persons using dog, gun, &c. on demand of any assessor, collector, land owner, &c. net, or other engine in Great Britain, for any of the purposes mentioned in this schedule, in respect whereof such person shall be chargeable as aforesaid, by any assessor or collector of the parish where any such person shall then be, or by any commissioner for the execution of this act, acting for the county, riding, division or place, in which such person shall then be, or by any lord or lady, or gamekeeper of the manor royalty or lands wherein such person shall then be, or by any inspector or surveyor of taxes acting in the execution of this act for the district in which such person shall then be, or by any person duly assessed to the duties granted in this schedule, or by the owner, landlord, lessee, or occupier of the land in which such person shall then be, it shall be lawful for such assessor, collector, commissioner or gamekeeper, inspector or surveyor, or other person assessed as aforesaid, or such owner, landlord, lessee, or occupier of land as aforesaid, to demand and require from the person so using such dog, gun, net, or other engine, the production of a certificate issued to him for that purpose, which certificate every such person is hereby required to produce to the person so demanding the same, and permit him to read the same, and (if he shall think fit) to take a copy thereof or any part thereof; or in case no such certificate shall be produced to the person demanding the same as aforesaid, then it shall be lawful for the person having made such demand to require the person so using such dog, gun, net, or other engine, forthwith to declare to him his christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed to the duties by this act granted; and if any such person shall,



A. D. 1803. after such demand made, wilfully refuse to produce and shew a certificate issued to him for that purpose, or in default thereof as aforesaid, to give in to the person so demanding the same his christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed, or shall produce any false or fictitious certificate, or give any false or fictitious name, place of residence, or place of assessment, every such person shall forfeit and pay the sum of twenty pounds to be sued for, recovered, and applied in like manner as any penalty may be sued for, recovered and applied by the acts herein mentioned, relating to the duties under the management of the commissioners for the affairs of taxes; provided that the commissioners before whom the information for the said penalty shall be made, shall also be justices of the peace of and for the same county, riding, division or place where the said offence shall be committed.

Penalty  
twenty  
pounds.

Publication  
of names of  
persons ob-  
taining cer-  
tificates.

XI.—The commissioners for the affairs of taxes shall once, or oftener, in every year, as soon as conveniently may be after such certificates shall have been issued, cause the names and residences of the several persons to or for whom such certificates have been granted for that year, in each county in Great Britain, distinguishing the persons acting under any deputations or appointments from others, and the manors, royalties, or lands, for which deputations or appointments have been granted, and also distinguishing the rate of duty assessed, to be inserted in some newspaper circulated in each respective county, or in such other newspaper, and in such manner as to them shall seem proper.

Penalty on  
using gun,  
dog, &c.  
without cer-  
tificate 20*l*.  
and sur-  
charge of  
duty.

XII.—If any person or persons shall, after the thirtieth day of June, one thousand eight hundred and eight, use any dog, gun, net, or other engine, for any of the purposes mentioned in this schedule, without having obtained such certificate as is directed by this act, in

order to an assessment for the year wherein such person A. D. 1808. or persons shall so use such dog, gun, net, or other engine, every such person shall be liable to the duty of three pounds three shillings, in the said schedule mentioned for that year, and also shall forfeit and pay the sum of twenty pounds, over and above the said duty; and the said duty shall be assessed by way of surcharge, according to the directions of the said acts respectively, in the district where the offence shall be committed; and the said penalty shall be sued for in like form and manner as any penalty may be sued for, prosecuted, and recovered by the acts herein mentioned, relating to the duties under the management of the commissioners for the affairs of taxes, or any of the said acts.

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*Exemptions from the Duties in Schedule (L.)*

I.—Any of the royal family.

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SCHEDULE (N.)

II.—Form of Certificate to be issued to every game-keeper, being a servant for whom the master or <sup>*See schedule*</sup> (L.) *Rule II.* mistress, or the lord or lady, or other proprietor of the manor or royalty, (if in England,) [or, lands, if in Scotland], shall be duly assessed to the duty on servants.

No.            Game Duty Certificate (A.)

[To be used when the servant  
pays the duty.]

By *A. B.* clerk to the commissioners acting in the execution of the acts for assessed taxes, for the division of *I.*, in the county of *L.*

Received from *C. D.* residing in the parish [or, township] of [*here name the parish or township*], in the said county, an assessed servant of *E. F.* [*here name the*

[z]

A. D. 18 2. *master or mistress*], of [*here name the residence of the master or mistress*], (in exchange for this certificate,) a receipt under the hand of *G. H.*, one of the collectors of assessed taxes for the said parish [*or, township*] of [*here name the parish or township*], for the sum of one guinea, as the game duty chargeable upon the said *C. D.*, in respect of his deputation as gamekeeper of the manor or royalty of *K.*, in the said county, (*if the certificate be granted in England*,) [*or if in Scotland*, in respect of his appointment as gamekeeper of the lands of *K.*, in the said county. ] (Given in pursuance of an act passed in the forty-eighth year of the reign of George the Third, and certified the                      day of                      in the year of our Lord

(Signed)

Clerk.

This certificate will expire on the                      day of                     

### III.

#### No.                      Game Duty Certificate (B.)

[To be used when the master  
pays the duty.]

By *A. B.* clerk to the commissioners acting in the execution of the acts for assessed taxes for the division of *I.*, in the county of *L.*

Received from *E. F.* [*here name the master or mistress*], residing in the parish [*or, place*] of [*here name the residence of the master or mistress*], in the said county, on behalf of *C. D.*, an assessed servant of the said *E. F.* (in exchange for this certificate,) a receipt under the hand of *G. H.*, one of the collectors of assessed taxes for the said parish [*or, township*] of [*here name the parish or township*], for the sum of one guinea, as the game duty chargeable upon the said servant, in respect of his deputation as gamekeeper of the manor or royalty of *K.*, in the said county, (*if the certificate be granted in England*,) [*or if in Scotland*, in respect of his

appointment as gamekeeper of the lands of *K.*, in the A. D. 1808.  
 said county.] Given in pursuance of an act passed in  
 the forty-eighth year of the reign of George the Third,  
 and certified the            day of            in the year  
 of our Lord

(Signed)

Clerk.

This certificate will expire on the            day of

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IV.—Form of Certificate to be issued to every game-  
 keeper, not being an assessed servant to any per-  
 son or persons.

### No.            Game Duty Certificate (C.)

By *A. B.* clerk to the commissioners acting in the ex-  
 ecution of the acts for assessed taxes for the division of  
*I.*, in the county of *L.*

Received from *C. D.*, residing in the parish [*or, town-*  
*ship*] of [*here name the parish or township*], in the said  
 county, (in exchange for this certificate,) a receipt under  
 the hand of *G. H.*, one of the collectors of assessed  
 taxes for the said parish [*or, township*] of [*here name*  
*the parish or township*], for the sum of three guineas,  
 for the game duty chargeable upon the said *C. D.*, in  
 respect of his deputation as gamekeeper of the manor or  
 royalty of *K.*, in the said county, (*if the certificate be*  
*granted in England*,) [*or if in Scotland*, in respect of  
 his appointment as gamekeeper of the lands of *K.* in the  
 said county,] the said *C. D.* not being an assessed ser-  
 vant to any person or persons. Given in pursuance of  
 an act passed in the forty-eighth year of the reign of  
 George the Third, and certified the            day of  
                                  in the year of our Lord

(Signed)

Clerk.

This certificate will expire on the            day of

[z 2]



A. D. 1808. V.—Form of Certificate to be issued to every person not being a gamekeeper.

No.                      Game Duty Certificate (D.)

By *A. B.* clerk to the commissioner acting in the execution of the acts for assessed taxes for the division of *I.*, in the county of *L.*

Received from *C. D.* residing in the parish [*or township*] of [*here name the parish or township*], in the said county, (in exchange for this certificate,) a receipt under the hand of *G. H.* one of the collectors of assessed taxes for the said parish [*or township*] of [*here name the parish or township*], for the sum of three guineas for the game duty, chargeable upon the said *C. D.* in his own right, throughout Great Britain. Given in pursuance of an act passed in the forty-eighth year of the reign of George the Third, and certified the  
day of                      in the year of our Lord

(Signed)

Clerk.

This certificate will expire on the                      day of

48 GEORGE 3. c. 93. A. D. 1808. *Rep.*

AN ACT TO REPEAL SO MUCH OF AN ACT OF THE FIRST YEAR OF KING JAMES THE FIRST, AS RELATES TO THE PENALTIES ON SHOOTING AT HARES; AND ALSO TO REPEAL AN ACT OF THE THIRD YEAR OF KING GEORGE THE FIRST, RELATING TO GAMEKEEPERS.

2 Jac. 1. c. 27.  
§ 2.

‘ Whereas an act was passed in the second year  
‘ (commonly called the first year) of the reign of King  
‘ James the First, intituled, “ an act for the better ex-  
‘ ecution of the intent and meaning of former statutes  
‘ made against shooting in guns, and for the preservation

‘ of the game of pheasants and partridges, and against A. D. 1808.  
 ‘ the destroying of hares with hare-pipes, and tracing  
 ‘ hares in the snow ;” whereby it was amongst other  
 ‘ things enacted, That every person which should shoot  
 ‘ at, kill, or destroy, with any gun, cross-bow, stone-  
 ‘ bow, or long-bow, any hare, should be subject to the  
 ‘ penalties therein mentioned : and whereas it is expe-  
 ‘ dient that the said provision should be repealed : and  
 ‘ whereas it is also expedient that a certain other act,  
 ‘ passed in the third year of his late majesty King George 3 *Geo. 1. c. 11.*  
 ‘ the First, intituled, “ an act to explain and amend  
 ‘ several laws therein mentioned for the better preserva-  
 ‘ tion of the game, should be repealed ;” and that other *Provision of*  
 ‘ provisions should be made relating to the appointment *2 Jac. 1. c. 27.*  
 ‘ of gamekeepers ;’ be it therefore enacted by the king’s *so far as re-*  
 most excellent majesty, by and with the advice and *lates to*  
 consent of the lords spiritual and temporal, and com- *hares ; and*  
 mons, in this present parliament assembled, and by the *recited act*  
 authority of the same, That the said provision of the *3 Geo. 1. c. 11.*  
 said recited act of the second of James the First, and the *repealed.*  
 said recited act of the third of George the First, shall  
 be and the same are hereby repealed.

It is further enacted, That it shall be lawful *Lords of*  
 for any lord or lady of any manor to appoint and depute *manors may*  
 any person whatever, whether acting as a gamekeeper *appoint*  
 to any other person or not, or whether retained and paid *game-*  
 for as the male servant of any other person or not, or *keepers,*  
 whether a qualified person or not, to be a gamekeeper to *whether*  
 any such manor, with authority to such person as game- *qualified or*  
 keeper to kill game within the same for his own use, or *not, &c. with*  
 for the use of any other person or persons whatever, to *authority to*  
 be specified in such appointment or deputation, whether *kill game for*  
 qualified or not ; and no person so appointed game- *their own*  
 keeper as aforesaid and empowered to kill game for his *use, &c.*  
 own use, or for the use of any other person so specified  
 as aforesaid, and not killing any game for the use of the

A. D. 1803. lord or lady of the manor for which such deputation shall be given, shall be deemed or taken to be, or entered or paid for as the gamekeeper or male servant of the lord or lady making such appointment or giving such deputation as aforesaid; any thing in any act or acts of parliament to the contrary notwithstanding.

Gamekeepers so appointed shall have the same rights as if qualified

III. And be it further enacted, That any person appointed gamekeeper under the authority of this act to kill game for his own use or the use of any other person, shall have the same rights, privileges, power and authority as if he had been legally qualified and appointed to act as gamekeeper, to kill game for the use of the lord or lady of the manor appointing such gamekeeper, under any laws in force immediately before the passing of this act.

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48 GEO. 3. C. 94. A. D. 1808.

AN ACT FOR REPEALING SO MUCH OF AN ACT MADE IN THE PARLIAMENT OF SCOTLAND, IN THE FOURTH SESSION OF THE FIRST PARLIAMENT OF QUEEN ANNE, INTITULED, 'ACT FOR PRESERVING THE GAME,' AS RELATES TO THE SHOOTING OF HARES.

Parliament of Scotland at its session 1st parliament Anne, relates to the shooting of hares

Whereas by an act of the *Scottish* parliament, passed in the fourth session of the first parliament of her majesty Queen Anne, intituled, "an act for preserving the game," it is amongst other things enacted, that no person whatsoever shall shoot hares under the penalty of twenty pounds Scots: and whereas it is expedient that the same should be in so far repealed: may it therefore please your majesty, that it may be enacted; and be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament

assembled, and by the authority of the same, That A. D. 1808.  
 so much of the said in part recited act, as relates to the  
 shooting of hares, shall be and the same is hereby re-  
 pealed.

48 GEO. 3. C. 144. A. D. 1808.

AN ACT FOR THE MORE EFFECTUAL PROTECTION  
 OF OYSTER FISHERIES AND THE BROOD OF OYSTERS  
 IN ENGLAND.

‘ Whereas an act of parliament passed in the thirty-<sup>31 Geo. 3.</sup>  
 ‘ first year of the reign of his present majesty, intituled, <sup>c. 51.</sup>  
 ‘ “an act for better protecting the several oyster fish-  
 ‘ eries within this kingdom :” and whereas the provi-  
 ‘ sions of the said act have been found inadequate to the  
 ‘ protection of the oyster fisheries of this kingdom : and  
 ‘ whereas doubts have arisen, since the passing of the  
 ‘ said act, whether the taking oysters or oyster brood  
 ‘ from any oyster bed or laying, or from any oyster  
 ‘ fishery, can under any circumstances be deemed felony,  
 ‘ and punishable as such : and it is therefore ex-  
 ‘ pedient and necessary that more effectual provision  
 ‘ should be made for the protection of the oyster  
 ‘ fisheries, and for removing such doubts as afore-  
 ‘ said : may it therefore please your majesty, that <sup>Penalty on</sup>  
 ‘ it may be declared and enacted ;’ and be it declared <sup>persons steal-</sup>  
 and enacted by the king’s most excellent majesty, by <sup>ing oysters</sup>  
 and with the advice and consent of the lords spiritual <sup>or oyster</sup>  
 and temporal, and commons, in this present parliament <sup>brood from</sup>  
 assembled, and by the authority of the same, That <sup>oyster beds,</sup>  
 every person who shall at any time after the first day of <sup>felony,</sup>  
 August, one thousand eight hundred and eight, knowingly <sup>puni- shable</sup>  
 and wilfully steal, take, and carry away any oysters or <sup>by transpor-</sup>  
 oyster brood from any oyster bed, or oyster laying, or  
 oyster fishery, being the property of any person or per-  
 sons, or body or bodies politick or corporate, and suf-



A. D. 1808. **sufficiently marked out as such, shall be deemed guilty of felony, and shall and may be transported for any term not exceeding seven years, or be imprisoned and kept to hard labour in any common gaol or house of correction, or penitentiary house, or imprisoned only for any term, not exceeding three years, as the court before whom any such person shall be convicted may adjudge.**

Proviso for persons claiming right.

**II. Provided always, and be it further enacted, That nothing in this act contained shall extend or be construed to extend to subject or make liable any person or persons to the penalties of this act who shall take or carry away any oyster or oyster brood from any oyster bed, oyster laying, or oyster fishery, wherein such person or persons shall have or claim to have a right to take and carry away such oysters, or oyster brood.**

Parish need not be named in indictments, and offence may be laid in the county where indictment is preferred.

**III. 'And whereas doubts may arise in what parish or county any oyster beds, layings, or fisheries are situated, and on that account difficulties may occur in bringing offenders to justice;' be it therefore further enacted, That it shall be sufficient in any indictment under this act, or under the said recited act of the thirty-first year aforeaid, to describe, either by name or otherwise, the bed, laying, or fishery in which the offence shall have been committed, without stating the same to be in any particular parish; and where the offence is committed on the border of any county, so as to make it difficult to ascertain the county, such offence may be stated to have been committed in the county in which the indictment shall be preferred, being either the county in which the offence was committed, or the adjoining county.**

Justices for towns, &c. may act as justices for counties.

**IV. 'And whereas it is doubtful whether justices of the peace for towns corporate, boroughs, or other places, and not being counties of themselves, and having special or exclusive jurisdictions, can act by virtue of the statute of the thirty-first year aforeaid:' be it therefore enacted and declared, That it shall be lawful**

for such justices to act in all cases arising within their A. D. 1803.  
 respective jurisdictions in like manner as any justice of  
 the peace for any county, riding, or division, may act for  
 such county, riding, or division, in the execution of the  
 said act, or of any law for protecting the oyster fisheries,  
 and broods of oysters.

V. And be it further enacted, That nothing herein Provisions of  
 contained shall extend, or be construed to extend, to re- 31 Geo. 3.  
 peal any of the provisions of the said act of the thirty- c. 51. not re-  
 first year aforesaid, except so far as the same respect the pealed by  
 stealing and taking of oysters from any oyster bed, lay- this act.  
 ing, or fishery.

50 GEO. 3. C. 67. A. D. 1810. *Ap.*

A. D. 1810.

AN ACT FOR THE BETTER PRESERVATION OF HEATH  
 FOWL, COMMONLY CALLED BLACK GAME, IN THE  
 COUNTIES OF SOMERSET AND DEVON.

‘Whereas by an act passed in the parliament of 13 G. 3. c. 54.  
 ‘Great Britain in the thirteenth year of the reign of his s. 1.  
 ‘present majesty, intituled, “an act to explain and  
 ‘amend the several laws now in being, so far as the  
 ‘same relate to the preservation of the moor or hill  
 ‘game,” it is enacted, amongst other things, that from  
 ‘and after the twenty-fourth day of June one thousand  
 ‘seven hundred and seventy-three, no person or persons  
 ‘shall, upon any pretence whatsoever, wilfully take,  
 ‘kill, destroy, carry away, sell, buy, or have in his, her  
 ‘or their possession or use, any heath fowl, commonly  
 ‘called black game, between the tenth day of December  
 ‘and the twentieth day of August in any year: And  
 ‘whereas it would tend very much to the preservation of  
 ‘the said game, if the time for taking and killing heath  
 ‘fowl were postponed;’ be it therefore enacted by the  
 king’s most excellent majesty, by and with the advice  
 and consent of the lords spiritual and temporal, and

A. D. 1810. commons, in this present parliament assembled, That  
 Taking black from and after the passing of this act, no person or per-  
 game in So- sons shall, on any pretence whatsoever, take, kill, or  
 merset and destroy, or attempt to take, kill or destroy, in the coun-  
 Devon be ties of Somerset and Devon, any heath fowl, commonly  
 between De- called black game, between the tenth day of December  
 cember 10 and the first day of September in any year; and every  
 and Sept. 1. person who shall transgress this act in any of the cases  
 Penalty. aforesaid shall, for every heath fowl so taken, killed or  
 destroyed, and for every attempt to take, kill or destroy  
 such heath fowl, contrary to the true intent and meaning  
 of this act, be liable to the same forfeitures and penalties,  
 to be recovered in the same manner, and subject to the  
 like appeal, and the same provisions in every respect  
 whatsoever as in and by the said recited act are enacted  
 in respect of any offence committed against the said act.

A. D. 1811.

51 GEO. 3. c. 120. A. D. 1811.

AN ACT TO AMEND AN ACT OF THE FORTY-SEVENTH  
 YEAR OF HIS PRESENT MAJESTY, FOR MORE EF-  
 FECTUALLY PREVENTING THE STEALING OF DEER.

42 G. 3.  
 c. 107.

‘ Whereas by an act passed in the forty-second year  
 ‘ of the reign of his present majesty, intituled, “ an act  
 ‘ for more effectually preventing the stealing of deer,”  
 ‘ no provision is made for a mitigation of the pecuniary  
 ‘ penalties thereby imposed for committing the several  
 ‘ offences therein mentioned, from the want whereof  
 ‘ considerable inconvenience has arisen;’ be it therefore  
 enacted by the king’s most excellent majesty, by and  
 with the advice and consent of the lords spiritual  
 and temporal, and commons, in this present parlia-  
 ment assembled, and by the authority of the same,  
 That, on the conviction of any offender under the  
 said act, for wilfully coursing or hunting, or taking  
 in any slip, noose, toil, or snare, or killing, wounding,  
 or destroying or shooting, or otherwise attempting to

On conviction  
 of offenders  
 under the re-  
 cited act, any  
 magistrate  
 may mitigate

kill, wound, or destroy, or carrying away, any red or fallow deer, kept or being in the *unenclosed* part of any forest, chase, purlieu, or ancient walk without the consent of the owner of such deer, or without being otherwise duly authorized, or for knowingly being aiding, abetting, or assisting therein or thereunto; it shall and may be lawful for the magistrate or magistrates by and before whom such offender or offenders shall be convicted, to *mitigate the penalty* of fifty pounds thereby imposed for the *first* offence to any sum at their discretion *not less than twenty pounds*, to be levied in the manner directed by the said recited act: Provided always, that every other part and provision in the said recited act shall be and remain in full force and effect as if this act had not been made or passed.

A.D. 1811.

the penalty of 50l. to 20l.

31 GEO. 3. c. 51. A. D. 1791.

A. D. 1791.

AN ACT FOR BETTER PROTECTING THE SEVERAL  
OYSTER FISHERIES WITHIN THIS KINGDOM.

‘Whereas the maintaining and preserving the several Preamble.

‘oyster fisheries of this kingdom is a great national object:

‘And whereas the laws now in being are not sufficient ef-

‘fectually to maintain and preserve the said fisheries, and

‘to prevent the destroying of the oyster brood therein;

‘in order therefore the better to protect the said fisheries,

‘and to prevent the destroying of the oyster brood within

‘the same, may it please your majesty that it may be

‘enacted,’ and be it enacted by the king’s most excel-

lent majesty, by and with the advice and consent of the

lords spiritual and temporal, and commons, in this

present parliament assembled, and by the authority of

the same, That if any person or persons shall, at any

time from and after the first day of August one thousand

seven hundred and ninety-one, with or by means of any

net, trawl, dredge, or other instrument or engine whatso-

From Aug. 1,  
1791, persons  
unlawfully  
catching oys-  
ters or brood  
within the li-



A. D. 1791.

imits of any  
fishery, pun-  
ishable by  
fine and im-  
prisonment.

ever, take or catch any oysters or oyster brood, within the limits of any oyster fishery of this kingdom, or shall dredge for oysters or oyster brood, or use any oyster dredge, or any net, instrument, or engine whatsoever, within the limits of any such fishery, for the purpose of taking or catching oysters or oyster brood, although no oysters or oyster brood shall be actually taken, or shall, with any net, instrument, or engine, drag upon the ground or soil of any such fishery, all and every such person and persons (other than and except such persons as shall be the owners, lessees, or occupiers of such fishery, or shall be otherwise lawfully entitled to take or catch oysters therein) shall be deemed and taken to be guilty of an offence and misdemeanor, and shall and may be prosecuted for the same by indictment at the assizes, or general quarter sessions of the peace, to be holden in and for the county, riding, or division in which such fishery shall lie; and the justices in sessions are hereby authorised and required to hear and determine all and every such offence and offences; and such person or persons being lawfully convicted by verdict, or by his or their own confession, shall and may be punished for any of the said offences, by fine and imprisonment, or either of them, as the court before whom such person or persons shall be so convicted shall think proper, such fine not to exceed twenty pounds or be less than forty shillings, and such imprisonment not to be for more than three months or less than one month.

Act not to  
extend to the  
taking of float-  
ing fish.

II. Provided always, That nothing in this act shall extend, or be construed to extend, to prevent or hinder any person or persons whomsoever from taking, catching, or fishing for any floating fish in the waters or creeks within the limits of any oyster fishery, with any net, instrument, or engine, which shall be made or fitted for the purpose of taking or catching floating fish only.

Justices may  
issue war-

III. And be it further enacted, That it shall be law-

ful for any justice of the peace acting for any county, riding, or division, wherein any offence shall be committed contrary to this act, upon complaint and oath made before him (which oath he is hereby empowered to administer), that any person or persons, except as aforesaid, hath or have, within thirty days next preceding such complaint, taken or caught any oysters or oyster brood, within the limits of any oyster fishery, or dredged for oysters, or oyster brood, or used any oyster dredge, or any net, instrument, or engine, within the limits of any such fishery, for the purpose of taking or catching oysters or oyster brood, although no oysters or oyster brood shall be actually taken; or with any net, instrument, or engine, dragged upon the ground or soil of any oyster fishery, to issue out a warrant or warrants under his hand and seal for the apprehending of the person or persons so offending, and for bringing him or them before himself or any other justice of the peace acting for such county, riding, or division; and the justice, before whom such person or persons shall be brought, shall, and is hereby authorised and required, if he see cause, to commit him or them to the common gaol, or other usual place of confinement for prisoners, in and for such county, riding, or division, there to remain until the then next assizes, or then next general quarter sessions of the peace, to be holden in and for such county, riding, or division, whichever shall first happen next after such person or persons shall be so apprehended and brought before such justice, unless such person or persons shall enter into recognizance before such justice with two good and sufficient sureties (each and every of them in the penalty of twenty pounds), to appear either at the said next assizes or general quarter sessions of the peace, which shall first happen as aforesaid, then and there to answer any indictment or indictments, that shall

A. D. 1791.

rants for apprehending offenders, and, for want of sureties, may commit them till the quarter sessions.

A. D. 1791. or may be preferred against him or them, under or by virtue of this act.

Persons found taking or using engines for taking oysters or brood, refusing to discover themselves, may be seized, &c.

IV. And be it further enacted, That if any person or persons, except as aforesaid, shall be found actually taking or catching any oysters or oyster brood, within the limits of any oyster fishery, or dredging for oysters or oyster brood, or using any oyster dredge, or any net, instrument, or engine whatsoever, within the limits of any oyster fishery, for the purpose of taking or catching oysters or oyster brood, although no oysters or oyster brood shall be actually taken, or with any net, instrument, or engine, dragging upon the ground or soil of any such oyster fishery, it shall be lawful for any person, being an owner, lessee, or occupier of such fishery, or otherwise lawfully entitled to take or catch oysters therein, and for his apprentice or servant (in case the person or persons offending against this act shall, on being required so to do, refuse to discover his or their real name or names, and the true place or places of his or their abode or residence respectively) to seize, secure, and detain every such person so being found actually taking or catching any oysters or oyster brood, or dredging for oysters, or using any oyster dredge, or any net, instrument, or engine for the purpose aforesaid, although no oysters or oyster brood shall have been actually taken, or with any net, instrument or engine dragging upon the ground or soil of such oyster fishery, and refusing to discover his real name and true place of abode, and forthwith to carry him and them before any justice of the peace acting for such county, riding, or division; and the said justice, on oath being made before him (which oath he is hereby empowered to administer) of the offence against this act, for which such person or persons was or were seized or secured and detained, shall and is hereby authorised and required to proceed against



him and them, in such and the same manner as if he or A.D. 1791.  
they had been apprehended and brought before such  
justice by virtue of a warrant or warrants issued for that  
purpose, under the authority of this act.

V. Provided always, and be it further enacted, That no justice of the peace shall, by virtue of this act, commit any person or persons, or take or require any security from him or them, for his or their appearance as aforesaid, unless one good and sufficient householder, being an owner, lessee, or occupier of, or otherwise lawfully entitled to take or catch oysters in the oyster fishery wherein the offence shall be sworn to have been committed, (whose oath that he is such owner, lessee, or occupier, or otherwise lawfully entitled as aforesaid, shall be sufficient evidence thereof to such justice,) shall enter into recognizance before the said justice in the penalty of twenty pounds, for his appearing either at the then next assizes, or general quarter sessions of the peace for the county, riding, or division, as the case may be, and then and there preferring and prosecuting with effect a bill of indictment against the person or persons so to be committed, or bound by recognizance, for the offence or offences, for which he or they shall be so committed or bound as aforesaid.

VI. And be it further enacted, That if at any time after any person or persons shall have been committed in pursuance of this act, two good and sufficient sureties shall, before the justice by whom such person or persons was or were committed, or any other justice of the peace for the same county, riding, or division, enter into recognizance in the penalty of twenty pounds each, with condition for the appearance of such person or persons so committed at the then next assizes, or general quarter sessions of the peace for the same county, riding, or division, which shall first happen, then and there to

No justice to  
commit, or re-  
quire security  
from any per-  
sons, without  
recognizance  
is entered into  
to prosecute.

Persons may  
be discharged  
from confine-  
ment upon re-  
cognizance.



A. D. 1801. answer to any indictment or indictments that shall or may be preferred against him or them by virtue of this act; then, and in such case, it shall be lawful for any such justice, by warrant under his hand and seal, to order such person or persons to be discharged from his or their said commitment, and delivered out of custody, and he and they shall be discharged accordingly; any thing herein contained to the contrary thereof in anywise notwithstanding.

This act not to affect any act now in force respecting any particular oyster fishery,

VII. Provided always, That nothing herein contained shall extend, or be construed to extend, to repeal, alter, abridge, or affect any act of parliament now in force, respecting any particular oyster fishery within this kingdom, or any clause, regulation, method of proceeding, power, matter, or thing therein; but that all and every the powers, authorities, jurisdictions, and directions contained in all such acts of parliament, shall and may be pursued, enforced, exercised, and executed in such manner and form, and as fully, to all intents and purposes, as if this act had not been made.

or to preclude prosecution at the Common Law,

VIII. Provided also, That nothing herein contained shall extend, or be construed to extend, to prevent, bar, or preclude any person from commencing any prosecution or action at the common law for any act or offence hereinbefore described, which shall be done or committed within the limits of any oyster fishery, in such manner and form as if this act had not been made; but, nevertheless, when any person shall have been punished in pursuance and by virtue of this act, for any offence against the same, such person shall not be prosecuted by virtue of any other law or statute, or be liable to any other punishment or penalty for the same offence, or to have any action or suit in law or equity brought against him on account of that offence for which he shall have been punished in pursuance of this Act.

IX. And be it further enacted, That no action at law A. D. 1791.  
shall be brought or commenced against any person or <sup>Limitation of</sup>  
persons for any arrest authorised to be made, or any <sup>actions.</sup>  
other matter or thing done, or to be done, by virtue of  
this Act, until after twenty-one days notice thereof, in  
writing; ~~shall have been given to the person or persons~~  
against whom such action is intended to be brought, or  
left at his or their last usual place or places of abode,  
setting forth the cause of such action; and that every  
such action shall be brought within the space of six  
calendar months next after the cause of complaint shall  
arise, and shall be laid and tried in the proper county  
wherein the same did arise, and not elsewhere; and the  
defendant or defendants in such action may plead the  
general issue, and on the trial thereof give this Act and <sup>General Is-</sup>  
the special matter in evidence; and if, on the trial of <sup>sue.</sup>  
such action, it shall appear that the same was commenced  
without having given such notice, or before the expira-  
tion of twenty-one days next after such notice shall have  
been so given or left as aforesaid, or after the end of  
six calendar months next after the cause thereof shall  
have arisen, or if such action shall be brought or laid in  
any other county than as aforesaid, or after sufficient  
tender of amends shall have been made to the party or  
parties aggrieved, that then, and in any of the cases  
aforesaid, a verdict shall be entered as found for the de-  
fendant or defendants; and in all cases where a verdict  
shall be found or entered for the defendant or defendants  
in any such action, or if the plaintiff or plaintiffs shall  
discontinue the same after appearance, or shall be non-  
suited, or if upon demurrer judgment shall be given  
against the plaintiff or plaintiffs, the defendant or defend-  
ants in such action shall have double costs, and the like <sup>Double costs.</sup>  
remedies for recovering the same as defendants have by  
law for recovering their costs in other cases.

A. D. 1791.

X. And be it further enacted, That this Act shall be deemed and taken to be a public act; and shall be judicially taken notice of as such, by all Judges, Justices, and other persons, without specially pleading the same

*Also 50 copies of the Act  
are required*

END OF THE FIRST VOLUME.

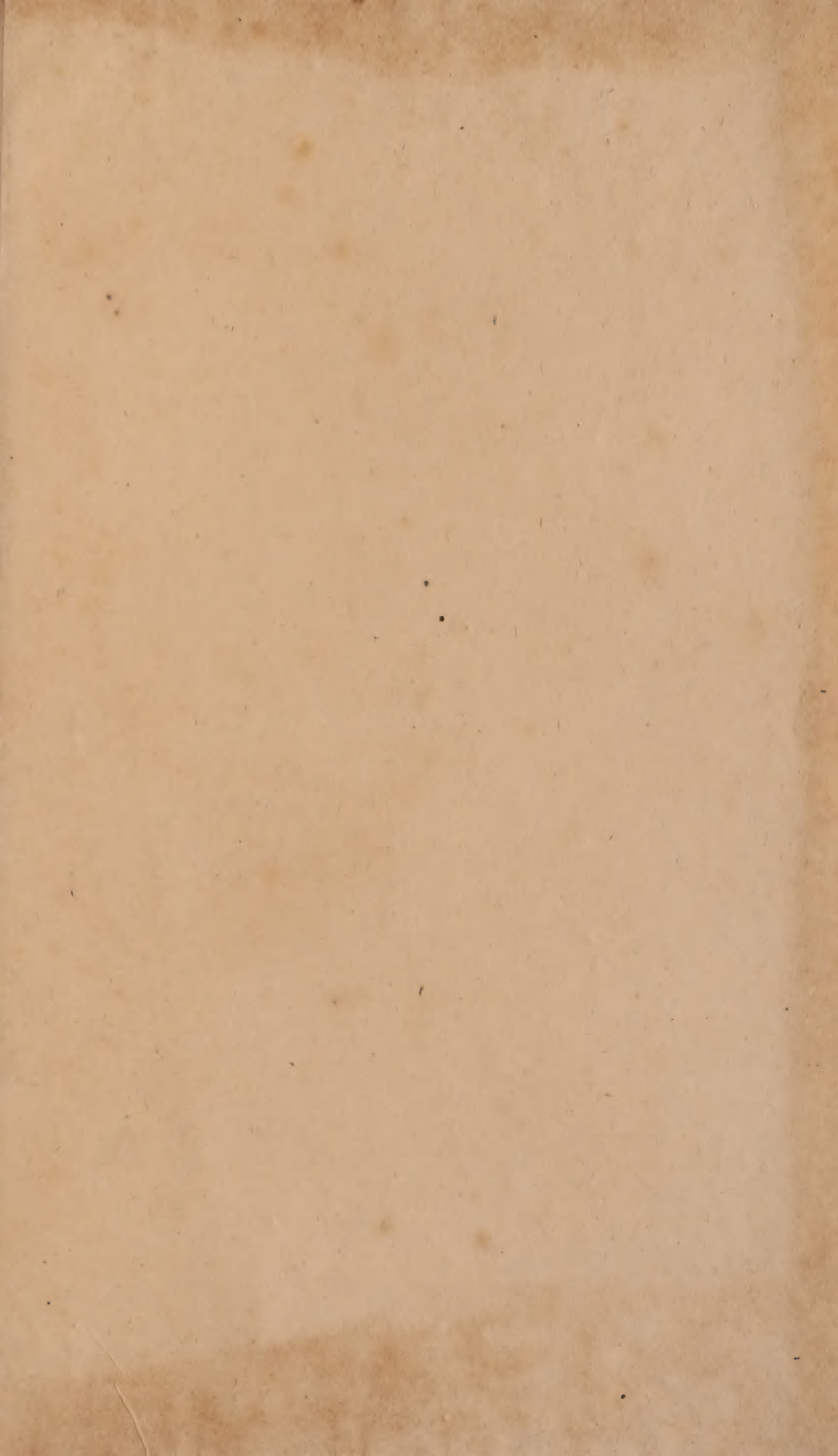
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